VOL XI.

91278

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1[redacted] 1921

Term No. [redacted]261

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, EDWARD SWANN, AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK AND LEWIS NIXON, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK, RESPONDENT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MARCH 17, 1921

(File No. 28164.)

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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 26785

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 31, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for Defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 26786
MR. O'BRIEN, Counsel for Defendant Swann.

Mr. Ransom: Major Clark handed me yesterday a list of further corrections desired by the defendants. I have gone over them and they are acceptable to the complainant. Do you want to have them set out in the record, or have them made the same as the others?

Mr. Clark: The same as the others. 26787

Mr. Chambers: I have five here which Mr. Vilas consented to.

The Master: Those that have been consented to will be corrected in the record, that is all.

ARTHUR W. TEELE, recalled.

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Teele, at page 6426, folios 19276-7 of the printed record of the testimony, the following answer is reported to have been made by you:

"A. That is an estimate. The company sets up $5,000 a month until the end of the year, when their actual legal expenses during the year are determined, and if the estimate is over the expenses are credited with that over-estimate, if the estimate is under, the
26789 expenses are charged in with any additional estimates."

Should not the record, in order correctly to report your testimony, be changed so as to substitute the word "amount" for the word "estimates" in the last line of the answer?

A. Yes, sir.

Q. And as so changed it would represent the testimony as given by you?

A. Yes, sir.

Q. On page 6562, folio 19684 are reported the following question and answer:

"The Master: Well, you have not changed
26790 any figures in the books; you have not changed any segregation of items?

"The Witness: No, it shows the balance of the additions and the withdrawals, and the books balanced as of 1918."

Should the record of the answer as given by you be changed to read as follows:

"The Witness: No, it shows the balances of January 1, 1906, the additions and withdrawals, and the book balances as of December 31, 1918."

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

26791

Q. At page 6564, folios 19691-92, there is recorded an answer by you as follows:

"A. My recollection of that, Mr. Chambers, is that in the years prior to 1911, following 1905, there had been no withdrawals from services, and that in 1911 there was a withdrawal from service in the accounts of services which had previously been withdrawn during 1909 and 1910, and they had been physically withdrawn, withdrawn from the accounts in 1911."

Should not the record be corrected so as to state your answer to the question as follows:

"A. My recollection of that, Mr. Chambers, is that 26792
in the years prior to 1911, following 1905, there had been no withdrawals from services in the accounts, and that in 1911 there was a withdrawal from service in the accounts, covering services which had previously been physically withdrawn during 1909 and 1910."

A. That is correct.

Q. At page 6632, folio 19896, there appears the following answer reported to have been made by you:

"A. They are shown in the monthly report from the branch offices, in the deductions shown, and if the operating ledger account of the journal entry taking up and dealing with the branch offices monthly re- 26793
ports deals with the net amount from the branches, then the deduction would not appear in the operating ledger. I cannot say without referring to the ledger and the accounts whether they have been so dealt with. That is a detail that I do not now recall."

Should not the record of the answer be corrected so as to strike out from the seventh line from the bottom the words "operating ledger account of the" —so that the answer will read as follows:

"A. They are shown in the monthly report from the branch offices, in the deductions shown, and if the

journal entry taking up and dealing with the branch offices' monthly reports deals with the net amount from the branches, then the deductions would not appear in the operating ledger. I cannot say without referring to the ledger and the accounts whether they have been so dealt with. This is a detail that I do not now recall."

A. Yes.

Q. And as so corrected it would show your testimony?

A. Yes, sir.

26795 Q. Mr. Teele, have you also been over your testimony as shown in the printed transcript and the mimeograph transcript?

A. Yes, sir.

Q. And have made up and furnished to me certain corrections?

A. I have.

Mr. Ransom: I have a list of these which perhaps I can read off, if you are willing, more easily than Mr. Teele, because they are put in a little different form than he had them.

Page 1963, folio 5889, before the word "organization" insert the word "accounting."

26796 Page 1999, folio 5997, before the word "audit," strike out "of" and insert "or," so as to read, "vouchers or audit sheets."

Page 2014, folio 6041, before "December" strike out "February," so as to read, "January and December."

Page 2015, folio 6044, after the word "payment" strike out "and," and insert "in," so it will read, "payment in the form."

Page 2036, folio 6108, after the word "say" strike out "that" and insert "we" so it will read, "as I say, we might."

26797

Page 2086, folio 6256, after "dollars" insert "and cents," so it will read, "in dollars and cents."

Page 2095, folio 6283, instead of "2034 Third Avenue" it should be "2084 Third Avenue."

Page 2118, folio 6354, the figure "$5,666.25" should be "$566.25."

Page 2126, folio 6377, "proved tickets" should be "proof tickets."

Page 2129, folio 6387, strike out the words "from the operating journal."

Page 2140, folio 6419, before the word "cost" insert "last."

26798

Page 2142, folio 6424, after the words "gross profit" strike out "in favor of the account."

Mr. Chambers: There is one we had better look at.

Mr. O'Brien: This one, your Honor, would not be explained by any accident of the photograph. I don't think any changes should be made unless they are mistakes of the stenographer. A man is not allowed to come back and correct his testimony, changing the sense of it.

Mr. Chambers: I believe that ought to be left there. In that answer he wants to strike out the words "in favor of the account." I don't think that ought to come out.

26799

By Mr. Ransom:

Q. Is that change one which should be made to conform your testimony to what was given?

Mr. O'Brien: I object to that.

The Master: I shall direct that the testimony as given at folio 6424 stand printed in that form. I will allow the witness to state, however, if he so desires, that the answer does not clearly state the facts, or that he wants to add something to it or wants to take something out.

The Witness: The answer in its present form is not clear, and I think it would be a clearer answer if those words were stricken out.

Q. In other words, that the answer would be clearer if it stood, "There is an apparent gross profit"?

A. Yes, sir.

The Master: Leaving out the words, "in favor of the account"?

The Witness: Yes, sir.

The Master: Why do the words "in favor of the account" confuse it?

26801 The Witness: I don't think they mean anything.

By Mr. O'Brien:

Q. You used them, didn't you?

A. I think the words "in favor of the account" are superfluous.

Q. Did you use them, Mr. Teele?

A. If that is the transcript in the minutes I presume I did.

The Master: That is the way the record will stand, as I gave it, with the additional statement that he has now given.

Page 3039, folio 9116, should read "commissions on others gas" and not "commission on other gas."

26802

Page 3039, folio 9116, strike out "case" and insert "schedule." It should read, "What schedule?"

Page 3040, folio 9118, before "gas" insert "cubic feet of," so it will read "between the cubic feet of gas purchased."

Page 3040, folio 9119, after the word "ledger" strike out "folio," so it will read "in the Ledger A." Also strike out the words "so that there may be an open figure."

26803

Mr. Chambers: That is another one; he wants to strike that out, the words, "so there may be an open figure."

The Master: The answer given by the witness at that place is, "There are two ledgers, and I am still in Ledger B, so there may be an open figure." I shall permit that to stand. I will let the witness make any statement he desires with reference to it.

The Witness: I do not think I said those words.

By Mr. Ransom:

Q. And that change you state is necessary to conform your testimony to that given, as recalled by you? 26804

A. Yes, sir.

The Master: I shall direct that the testimony stand as printed, with the witness's statement now given taken in connection with it.

Mr. Ransom: Page 3048, folio 9144, the question should read, "Tell us, Mr. Teele" instead of "Tell us, Mr. Brundage."

Page 3046, folio 9136, what appears to be an answer is a question. Also strike out the small "a."

The Master: Beginning "Of course"? 26805

The Witness: Yes.

Mr. Ransom: Page 3056, folio 9166, after the words "system of accounts" strike out "construction."

Page 3058, folio 9172, after "collected" strike out "or collected," so it will simply read "are subsequently collected during this year."

Page 3058, folio 9174, should read "is closed into the company's general profit and loss account" and not "in."

26806

Page 3059, folio 9175, before "property" strike out "certain" and insert "such," so as to read, "cost of such property as is withdrawn."

Page 3059, folio 9177, should read "the accrual of interest on the difference" instead of "the accrual of the differences."

Page 3060, folio 9178, "P" should be "B."

Page 3062, folio 9184, strike out the words "some of."

The Master: That is in my question, but I will leave it stand.

Page 3062, folio 9186, should read "Folio 35,
26807 two items that are split, miscellaneous rent revenue and joint gas rent revenue. That part of the item miscellaneous rent revenue appearing in the column applicable to the gas business." Strike out "that there are," and then it goes on, "two items that are split." Strike out "and the item" and insert "joint gas rent revenue." Then strike out the word "the."

The Master: I will let the record stand as it now stands printed, but I will let you ask the witness whether the record as printed correctly states the facts—not correctly states what he said, but correctly reports him.

26808 Mr. Ransom: It obviously does not even state what he said. It is not even intelligible.

The Master: That may be. The question is by Mr. Ransom. What was it you meant to say?

The Witness: The two items that are split, Miscellaneous Rent Revenue and Joint Gas Rent Revenue. That part of the item Miscellaneous Rent Revenue appearing in the column "applicable to the gas business," and so on.

Mr. Ransom: Page 3063, folio 9187, strike out the words "Miscellaneous Rent Revenue" and insert "is" before "derived."

Mr. Chambers: I ask that you let it stand just as it is.

The Master: I will let the witness change that record anyway he wishes.

The Witness: "Is derived from the property classified as being used in the gas business."

Q. You desire that that correction should be made?

A. I do.

The Master: Give the answer now the way you want it given as to that matter; start from the beginning and give us the answer to that question as you want to give it. 26810

Mr. O'Brien: Of course I object, your Honor, to this procedure. The examination of this witness was closed, and in going back over these questions piecemeal, allowing the witness to change the meaning of an answer, an intentionally confused answer, and tending to clarify something given in a misty way when the witness was on the stand, I object to.

Mr. Ransom: The tactics of the counsel for the District Attorney have been such throughout this case that it has been an impossible task for the stenographers to get this record correctly. There was never such a record made in human history as has been precipitated by the interrupting tactics of the attorney for the defendant Swann. 26811 Counsel in no case on record ever did such a thing, even in a police court.

Mr. O'Brien: Your Honor, I move to have the remarks of the Judge stricken from the record. I do not think we should embalm that kind of remark.

Mr. Chambers: Should we have it stricken out, or not taken seriously?

26812

The Witness: I would like to state in place of the answer as printed, the following: "Yes, you will find on this Schedule 14-A, folio 35, two items that are split, Miscellaneous Rent Revenue and Joint Gas Rent Revenue. That part of the item Miscellaneous Rent Revenue appearing in the column applicable to the gas business was derived from properties classified as being used in the gas business," etc., as printed.

The Master: I do not want "etc."; I want the answer.

The Witness: There is so much more in addi-
26813 tion.

The Master: Read the rest of the answer as you want it given in answer to that question.

The Witness: "The amount put in the other column is the amount derived from the properties not considered as being used in the gas business. The other item of joint gas rent revenue which is split shows in the column applicable to the gas business the amount of $99,616.65, which is in accordance with the amount shown on Schedule 6, on folio 7, and the amount shown in the column as not applicable to the gas business, $120,164.09, is the amount which is derived from
26814 the joint gas rent revenue and is considered as not a part of the revenues, and which is set out on Schedule 6, folio 7. The total of the revenues derived from the gas business is $15,694,772.10, and as computed at the rate of one-half of one per cent the amount of the tax is $78,473.86, being the portion of the total of the gross earnings tax which is considered as being applicable to the gas business, as shown on page 34, Schedule 14."

Mr. Ransom: And it should be—

Mr. O'Brien: I object to Judge Ransom testifying. The witness has been asked by the Court

26815

to state what his answer is and I object to Judge Ransom reading into the answer.

Mr. Ransom: Instead of being "$117,279," it should be "$117,270.90."

The Master: The record shows that I said, "The total tax being $117,279." And the witness said, "$117,279." You say it ought to be what?

Mr. Ransom: The item to which reference was made was not $117,279, it was $117,270.90.

The Master: I will direct that the record be corrected accordingly.

26816

Mr. Ransom: Page 3065, folio 2193, the figure there given as "$539,000," is "$539,272.90."

The Master: It will be corrected accordingly.

Mr. Ransom: Then the reference to Exhibit 179 should be "178" and the figure "$508,000" should be "$508,939."

The Master: It will be corrected accordingly.

Mr. Ransom: Page 3066, folio 9196, after the word "Company" strike out "as between taxes—that portion," so it will read "Company of the capital stock tax showing that portion which is."

The Master: What is it you want?

26817

Mr. Ransom: After the word "Company" strike out "as between taxes—that portion," and insert the words "showing that portion which is."

The Master: I will permit that.

Mr. Ransom: Page 3066, folio 9198, the figure "$450.35" there given is incorrect. It should be "$458.35."

Page 3070, folio 9209, the figure is incorrectly set forth in the minutes. It should be "$182,417.23," instead of "$142,000."

The Master: The record will be corrected accordingly.

26818

Mr. Ransom: Page 3072, folio 9215, the figure should be "$117,270.90" instead of "$117,000."

The Master: It will be corrected accordingly.

Mr. Ransom: Page 3073, folio 9219, "The Witness: This amount of accrued taxes" should be "This amount of assumed taxes."

The Master: It will be corrected accordingly.

Mr. Ransom: In the same folio, "Against the accrued tax account," strike out "and" and insert "that is," so it will read, "Against the accrued tax account, that is, there is," and so forth.

26819

Mr. Ransom: Page 3074, folio 9220, the answer of the witness should read, "A part of the $117,000 which is entered monthly and the amount of the tax paid is charged against," and so forth.

The Master: How does he want it to read? I remember on a number of occasions Mr. Teele, in testifying, has talked just that way, and the stenographer has evidently got it just as he talked; but I felt at the time that Mr. Teele did not mean to have everything taken down that he said.

Mr. Ransom: The answer should be, "A part of the $117,000."

Mr. O'Brien: I object to that.

26820

Mr. Chambers: It seems to me that is a drastic change. The stenographers were very accurate in reporting the testimony.

The Master: That is the trouble with this answer; they took down everything said. What I will do here is to let the record stand as it is and let the witness give what he says is the correct answer to my question, "Is this $117,000 odd the amount entered as the accrued tax?" Make an answer to that as you would like to have it appear.

26821

The Witness: The part, $117,000 which is entered monthly.

The Master: As I understand, the witness prefers to leave it stand just as it is?

The Witness: Yes, you understand it.

Mr. Ransom: You mean the latter part?

Mr. O'Brien: Oh, the whole of it. Let us have it stand as it is.

The Master: It will all stand as it is.

Mr. O'Brien: We want to speed this up and waste no time here on these questions, where there are apparently errors, but where you want to change and polish up something given in a confused way when we had him on the stand, we are objecting to it.

26822

Mr. Ransom: Page 3075, folio 9223, should read, "but it does appear in other books," and strike out the word "the" and insert "other."

The Master: That is all right.

Mr. Ransom: The same folio should read, "We hardly charge excess dividend tax against gas operations because they."

Mr. Chambers: I object to that.

Mr. Ransom: It reads, "excess profit tax on the gas revenues because they," and it is absolutely meaningless as it stands.

26823

Mr. O'Brien: Maybe it was meaningless as it was testified to.

Mr. Chambers: Is it meaningless?

Mr. Ransom: You could hardly charge the excess profit tax on the gas revenues. Obviously what he referred to was the dividend tax. That was being talked about at that point.

Mr. Chambers: I am not so sure as you are about it.

The Master: That answer was given just as it is reported, and I will not permit it to be

26824 changed. I remember it perfectly; I remember it very well. The point about it was this: The examination had reference to excess dividends, and I interrupted with something entirely different. I said, "What did you do with the excess profits?" Well, he said there were not any excess profits, there were not any profits, and you could not very well charge an excess profit when there was not any profit on the business. I said, "How did you charge the excess profits tax?" I was thinking ahead of something you were talking about. He said, "We hardly charged excess profit tax
26825 on the gas revenues, because they produced none." That is the fact, is it not? You could not very well charge excess profit tax when there was none to charge it to?

The Witness: That is right.

The Master: We will not change it. I remember it perfectly. The Gas Company's attitude is there was not any profit in the gas business, so there was no excess profit to charge.

Mr. Ransom: Page 3076, folio 9226, the answer, "I have the entries which I made" should be, "I have the entries which are made."

The Master: Yes.

26826 Mr. Ransom: Page 3076, folio 7227 should read, "22,500, which is credited in January," not "credited to January."

The Master: Yes.

Mr. Ransom: Page 3081, folio 9241, "investments had been traced back to its source," not "has been traced."

The Master: No, that is exactly what he said, "The income from the investments had been traced back to its source so that we were able to make an analysis of the investments."

26827

Mr. O'Brien: I object to that, your Honor. I think he meant to have it just in the tense in which it is reported.

The Master: Let it stand.

Mr. Ransom: Exception. Page 3082, folio 9244, the figure should be $673,379.61, not $673,000.

The Master: Yes.

Mr. Ransom: Page 3082, folio 9245, the answer should be, "The State Tax Commission," not "The State Tax Commissioner."

The Master: Yes, allowed.

Mr. Ransom: Page 3084, folio 9252, should read, "Books together and during their use they have kept one class." 26828

Mr. O'Brien: That is objected to.

The Master: No, I will let the record stand as it is, it is clear enough.

Mr. Ransom: I do not think it is clear as transcribed. Page 3085, folio 9253, strike out the word "bonds," and insert the word "balance."

The Master: Yes, that is correct.

Mr. Ransom: Same page, same folio, should read, "real estate of corporations," not "real estate and corporations."

The Master: That is correct.

26829

Mr. Ransom: Page 3186, folio 9556, the figure should be $117,270.90 instead of $117,270.92.

The Master: Yes.

Mr. Ransom: Then page 3188, folio 9563, an answer of the witness is credited to me.

The Master: Yes, instead of the word "Mr. Ransom," folio 9563, put in the letter "A" for answer, the answer by the witness begins, "The amount is made up"—

Mr. Ransom: The same folio should be "credited to accrued taxes," not "credited to accrued interest."

26830

Mr. O'Brien: Objected to.

Mr. Chambers: How does that look? It is pretty important. We were dealing there with taxes and interest on unpaid taxes.

The Master: "The amount is made up from Ledger A. I have the item at 1112 of the operating ledger for 1918, being Complainant's Exhibit 189." Will you show me just where that entry is in regard to the real estate tax? "A. The amount is made up and included in the respective monthly amounts credited to accrued 'interest,'" it shows here, and it must have been taxes—"on

26831 the one hand and charged to taxes account on the other hand." He must have said that, if he said interest it must have been a pure error.

Mr. Ransom: Folio 9584, "The tax bills for property," instead of "The tax bills have property."

The Master: Yes.

Mr. Ransom: Page 3157, folio 9471, "The operating ledger," instead of "The operating record."

The Master: No, this is in Mr. Carter's. I do not think he said "the operating journal," I think he said "operating ledger."

26832 Mr. Ransom: Yes, I say operating ledger.

The Master: I think that is it, only it is Mr. Carter's statement. The statement by Mr. Carter, "The operating record," should be "operating ledger."

Mr. Ransom: Page 3199, folio 9597, the item should be "$22,314.82."

The Master: Yes.

Mr. Ransom: Page 3201, folio 9601, should read, "that was assessed for personal tax," instead of "passed."

The Master: Yes.

26833

Mr. Ransom: Page 3206, folio 9616, the figures should read $48,870.62 instead of $48,170.62.

The Master: Yes.

Mr. Ransom: Page 3208, folio 9623, "Total amount of taxes" instead of "Total number of taxes."

The Master: Yes.

Mr. Ransom: Page 3213, folio 9637, the figure should be "$1,572,488.17" instead of "$1,572,548.17."

The Master: Yes.

Mr. Ransom: In two places in folio 9637 and one place in folio 9638.

26834

The Master: Yes.

Mr. Ransom: Page 3220, folio 9658, after the word "Company" it should read, "which are charged," instead of "which I charged."

The Master: That is correct.

Mr. Ransom: And later, in the same folio, "this account, or rather, which are credited," instead of "which I credited."

The Master: That is correct.

Mr. Ransom: Also later in the same folio, referring to the bills rendered, "which are charged."

The Master: Yes, that is correct.

Mr. Ransom: Instead of "I charged." Page 3223, folio 9667, should read, "done, and what he relied on," instead of "what he arrived on."

26835

The Master: Yes.

Mr. Ransom: Folio 9904, page 3202, should read, "in cubic feet of gas manufactured for the company" instead of "by the company."

The Master: Yes, that is correct.

Mr. Ransom: Page 3304, folio 9911, from the answer strike out the words "New Amsterdam account."

Mr. Chambers: That I object to.

26836 Mr. Ransom: "It refers to journal entry 73."

The Master: Wasn't that particular item a New Amsterdam item?

The Witness: I do not know where the New Amsterdam account comes from. This is the answer to the question, "Where do you find the explanation of that"—"It refers to journal entry 73," that is the answer. I do not know where the "New Amsterdam account" comes from, unless the—

The Master: I think you will find that that entry probably had to do with a New Amsterdam charge. It is not important. Let it stand.

26837 Mr. Ransom: Page 3307, folio 9919, should be, "36.71 cents a thousand cubic feet," instead of a "cubic foot." It does not yet cost 36.71 cents a cubic foot.

The Master: Yes.

Mr. Ransom: Page 3307, folio 9919, the answer should be "The entry does not purport" instead of "propose."

The Master: Yes.

Mr. Ransom: That is all for Mr. Teele.

26838

26839

JOHN H. N. ARMSTRONG, recalled.

DIRECT-EXAMINATION BY MR. RANSOM:

Mr. Ransom: This is one of the corrections that was submitted to the defendants and was not either agreed to by the defendants or approved by the Master.

Q. Mr. Armstrong, at page 4564 of the record, folios 13690 and 13691, there are the following question and answer: "Q. In that tax report that is not called investment value, is it? A. I believe that is exactly what it is called in the tax report." Should not the question answered by you read: "In that tax report that is not called reproduction value, is it?"

26840

A. Yes, sir, that is what I understand.

Mr. O'Brien: Wait a minute.

The Master: Let us see that.

Mr. O'Brien: You left out the word "exactly" in reading that, "that is exactly what I believe," whether intentionally or not.

The Master: I won't allow a correction in the record. The witness may have misunderstood Mr. Chambers' question. Mr. Armstrong was asked by you, "In that tax report that is not called investment value, is it?" And you answered, as I recall it—yes, you did answer, and I recall the question, and that is just what—"I believe that is exactly what it is called in the tax report." Did you understand Mr. Chambers' question to ask you whether it was investment or reproduction.

26841

The Witness: Reproduction, or I would not have made that answer.

The Master: Your statement is that in the report referred to by Mr. Chambers, it is called "reproduction value," not "investment value"?

The Witness: Yes, sir.

The Master: You want to change your testimony accordingly?

The Witness: Yes, sir.

The Master: It is not a correction, it is a change in the testimony. I remember very well, Mr. Chambers, I did not want to interrupt at the time, I had been interrupting so much I got tired doing it, and I remember that question, and I remember the answer, and I was surprised the witness answered it as he did.

26843

HERBERT W. ALRICH, recalled.

DIRECT-EXAMINATION BY MR. GOETZ:

Q. Mr. Alrich, at page 896, folio 2686, at the top of the printed page record, there is a question addressed to you, and the answer made by you concerning meters. Is the record correct as to whether the question was put to you and whether you made the answer?

A. It is not correct.

The Master: In what respect?

26844

The Witness: No such question was addressed to me. I never gave such an answer, I could not. I have no knowledge of the subject involved in the question.

The Master: I cannot understand that.

Q. Do you recall to whom the remark was addressed and by whom the answer was made?

A. It was a colloquy between counsel down on the floor. It is my recollection that Colonel Hayward asked the question and Mr. O'Brien answered it.

The Master: Apparently I said, "Is that in your department?"

26845

The Witness: You did; you turned around and asked me that question, hearing this colloquy between counsel.

The Master: Turned around? Then I said the question is not allowed.

The Witness: I called attention to it, your Honor, at the time the record appeared, at once, I called the attention of Judge Ransom to it.

Mr. Goetz: Yes, that is correct, the very next day we received an item from Mr. Alrich calling attention to the record.

The Master: I will have to let the record stand as it is, but will take Mr. Alrich's testimony just given, that that question was not put to him, and he did not give that answer. 26846

The Witness: I could not, because I do not know anything about it.

ALTEN S. MILLER, recalled.

DIRECT-EXAMINATION BY MR. RANSOM:

Mr. Ransom: At page 7599, folio 22796, "474 West 15th Street" should be "474 West 159th Street." 26847

The Master: Yes, I will allow that correction.

Mr. Ransom: Page 7607, folio 22821, "boiler fuel" should be "boiler flues."

The Master: I will allow the correction.

Mr. Ransom: Page 7640, folio 22920, the thirteenth line from the bottom "assigned" should be "designed."

The Master: Correction allowed.

Mr. Ransom: Sixth line from the bottom, "13,000 pounds and the tension" should be, "13,000 pounds in tension."

26848

The Master: Yes, and you better strike out the words "and the" on the next line.

Mr. Ransom: Yes.

The Master: Correction allowed.

Mr. Ransom: Page 7702, folio 23104, the fourth line, the word "indication" should be "condition."

Mr. O'Brien: I object to that.

The Master: I won't allow that correction. That is exactly what the witness said, "A. No, I do not imagine so. There is no indication that it was older. The indication is that more work was
26849 needed, that was all." That is exactly what the witness said.

Mr. Ransom: The same page, eighth line, the words "have done" should be "have specified."

Mr. O'Brien: Objected to.

The Master: Yes, I will allow that. That is not what he said, but I will allow it.

Mr. Ransom: Page 7719, folio 23157, the fifth line from the bottom, "drum" should be "case."

The Master: No, I won't correct that record. I will let the witness state that he made a mistake in making that statement, but I won't change it. At folio 23157, Colonel Miller, you were
26850 asked: "Q. What did you do to find out whether it was functioning correctly or not," referring to the drum meters and the proportional meter at 99th Street, and you said, "A. I listened to the operation of the meter and watched the operation of the hands on the meter. Q. Where did you listen? A. I listened with my ear against the drum." Now, do you want to change that statement?

The Witness: Yes, it should be "against the case." It is manifestly impossible to get your ear against the drum when it is operating.

26851

Mr. Ransom: The same would apply also to folio 23160, on page 7720.

Mr. O'Brien: Mr. Miller, you used the word "drum" on that occasion?

The Master: I have so ruled.

Mr. Ransom: Page 7721.

The Master: What about folio 23160?

Mr. Ransom: Well, there is the same situation there, he used the word "drum" instead of the word "case," fifth line from the bottom.

The Master: The fifth line from the bottom, "The drum itself is of cast iron," is that statement incorrect?

26852

The Witness: It is incorrect, sir; it should be "case."

The Master: You wanted to say "case"?

The Witness: Yes, sir.

The Master: I remember you said drum, that is why I won't let you change the word.

Mr. Ransom: Page 7721, folio 23162, the words "screw on a small leader" should be "screw on a small lever."

The Master: Yes, correction allowed.

Mr. Ransom: Page 7790, folio 23370, the last line, answer "no" should be "yes."

Mr. O'Brien: Objected to.

26853

The Master: No, I won't allow that. I do not quite understand Colonel Miller's suggestion that that be changed. "You got that from what notes? A. I just figured it this moment from the exhibit —not from the exhibit rather, but from the book which you have before you. Q. Have you any data on that? A. No. Q. In your own handwriting? A. No. Q. Furnished by whom?" Now that question "furnished by whom" would not ordinarily have been asked if he had said he had his own data.

Mr. Ransom: It certainly would not be asked if he said he did not have any data.

The Master: I will let the witness state that the answer as it appears is incorrect, if that is a fact. Do you say that answer is incorrect?

The Witness: Yes.

The Master: And what you want to say is "yes" instead of "no"?

The Witness: Yes.

Mr. Ransom: What you did say.

The Master: No, I won't allow it.

26855 Mr. Ransom: Well, the text shows that.

The Master: I do not think it does. It doesn't make any difference. I will let the witness state now that the answer should be, yes, whether he made a mistake in answering no or the stenographer made a mistake in reporting no, it is not material. You say the answer is, yes?

The Witness: Yes.

Mr. Ransom: Page 7803, folio 23409, the eighth line from the bottom "the fire brick and the gas apparatus" should be "the fire brick in the gas apparatus."

The Master: That correction is allowed.

26856 Mr. Ransom: That is all from Colonel Miller.

GEORGE E. WOODS, recalled.

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Woods, you have been over your testimony as given in the course of this trial?

A. I have.

Q. And you have noted and furnished to me certain corrections in your testimony?

A. Yes, sir.

26857

The Master: Read them off in the same way as you have given the others. Have these been submitted to the other side?

Mr. Ransom: I think not.

The Master: Go ahead.

Mr. O'Brien: Judge Ransom, is this something of which we have been furnished a copy?

Mr. Ransom: I don't think so.

Mr. O'Brien: I object to any changes being made in the record, no indication having been made to us that they intended to recall the witness to have all these changes made.

26858

The Master: What changes do you say should be made in the record?

Mr. O'Brien: Exception.

Mr. Ransom: Page 4636, folio 13906, fourth line, the figures "5.80" and "6.10" should be changed to "580" and "610," so that it should read, "with the heating value running from 580 to 610, depending upon the coal and the quality of gas that is being made."

The Master: Yes, I will allow that correction.

Mr. Ransom: Page 4636, folios 13906 and 13907, eleventh line, the same correction should be made.

26859

The Master: Yes, and in the next line the same correction.

Mr. Ransom: Page 4636, folio 13908, twenty-eighth line, the answer should read, "In order to enrich it you have to enrich it with oil or carburetted water gas." The word "carburetted" should be inserted.

Mr. O'Brien: I object to that.

The Master: No. I will not allow that. We all know it means carburetted water gas.

Mr. Ransom: Page 4636, folios 13908 and 13909, next to the last line on this page, the word "carbonized" should be changed to "carburetted."

26860

Mr. O'Brien: I object to that.

The Master: The correction is allowed.

Mr. Ransom: Page 4637, fourth line, "in the distillate" should read "on the district."

The Master: Correction allowed.

Mr. Ransom: Page 4637, folio 13910, twelfth line, the answer should read, "The carbon content derived usually from anthracite coal or coke."

The Master: Correction allowed.

Mr. Ransom: Page 4610, folio 13,920, seventh line from the bottom of the page, it should read, "These gases then pass into the superheater and

26861 the sensible heat from these gases give a temperature to the checkerbrick which will fix the gases for commercial use."

Mr. O'Brien: I object to that.

The Master: It will be impossible for me to say just what the witness said at that time. The witness did not always talk distinctly. I got the sense of what he said to be at that time what he now says he said. I shall allow the record to stand as printed, but will let the witness say whether he wants to change that in any form, and if so how he wants to change it. Do you want to change it as read by Judge Ransom?

26862 The Witness? I do.

The Master: Read it, Judge Ransom.

Mr. Ransom: "These gases then pass into the superheater and the sensible heat from these gases give a temperature to the checkerbrick which will fix the gases for commercial use."

The Master: I will let the witness state that that is what he wants to say.

Mr. Ransom: Page 4667, folio 14000, fourteenth line, the answer should read:

"I think you can find those amounts and the various amounts considering the statutory requirements."

26863

Mr. O'Brien: This paraphrasing of the testimony I object to.

Mr. Chambers: He is injecting a word there.

The Master: It doesn't mean much without it.

Mr. O'Brien: Well, the witness gave that kind of testimony, sometimes he was talking through his whiskers, and sometimes he was in the clouds.

The Master: I shall allow the record to stand, but will let the witness make any explanation he wants to make. The question was with reference to statistics as to how much gas oil per thousand was required, and he said 4.1, and then 26864
the question, "What kind of oil," and the answer, "To comply with the statutory requirements of New York. Q. Are these statistics at all recognized statistics, Mr. Woods? A. They are. Q. In any published records on gas making? A. I think you can find those amounts and the various amounts of the statutory requirements." You want to say something with reference to that?

The Witness: It does not make any sense.

The Master: What does make sense?

The Witness: I think I can find those amounts and the various amounts considering the statutory requirements. I think that would be better. 26865

Mr. O'Brien: Mr. Woods, let me ask you a question. Did you suggest these changes?

The Witness: I did.

Mr. O'Brien: Or did Mr. Goetz get them up for you?

The Witness: He did not.

The Master: I don't think the change you suggest makes it much better than it was.

The Witness: I don't know just what I said at the time. What I meant to say was that in

26866

the published statistics you could find these quantities as being required to make that quality of gas.

The Master: I think there is enough of it following to make it clear.

Mr. Ransom: Page 4673, folio 14019, thirty-first line and following, the decimal point is in the wrong place in these figures—instead of being .1198, it should be 11.98.

The Master: That is allowed.

Mr. Ransom: Page 4679, folio 14037, the last question on the page the words, "Rechecked with checker breakers" should be "Rechecked with the checker bricks that have been referred to."

26867

The Master: That is correct, it will be allowed.

Mr. Ransom: Page 4691, folio 14071, that figure is transposed in the second question on the page. Instead of 1.6 cents per gallon, the figure should be 6.1 cents per gallon.

The Master: The quantity is correct, 1.6?

The Witness: Yes.

The Master: But the price should be 6.1 cents?

The Witness: Yes.

26868

The Master: That correction will be allowed.

Mr. Ransom: Page 4698, folio 14092, fourth line, the sentence should read: "Then we have the sales and gas used by the companies, which we add together, which is the amount that we have unaccounted for."

The Master: That will be allowed.

Mr. Ransom: Page 4698, folios 14092 and 14093, the sentence should read: "That unaccounted for varies from time to time, depending upon the time of year, the temperature conditions, et cetera, but the normal unaccounted for

26869

with our company would be about seven per cent for the allied companies." The word "of" should be changed to "for."

Mr. O'Brien: I object to that.

The Master: Yes, that is correct, I will allow it.

Mr. Ransom: Page 4705, folio 14114, there should be a correction in Mr. Bradley's initials. It should be "William H. Bradley."

The Master: Yes, that is correct.

Mr. Ransom: Page 4719, folio 14156, twelfth line, the answer of the witness should read: "It would depend whether it was straight coal gas or enriched coal gas, straight coal gas enriched with high candle power water gas, or with oil gas. The result would be practically the same."

26870

The Master: The correction will be allowed.

Mr. Ransom: Page 4725, folio 14173, first line on the page, the answer should be.

"I am paid $500.00 a year by the New York & Queens Gas Company." That is "500" in place of "5,000."

The Master: Correction allowed.

Mr. Ransom: Page 4725, folio 14174, the same correction should be made.

The Master: Yes.

26871

Mr. Ransom: Page 4746, folio 14238, the question is, "They do not need the 189th Street main, do they?" The correct question is, "They do not need the 139th Street main, do they?"

The Master: Correction allowed.

Mr. Ransom: Page 4746, folio 14238, the answer should read, "No, not for their own particular use entirely."

Mr. O'Brien: I object to that.

The Master: That is not allowed.

Mr. Ransom: Page 4749, folios 14245, 14246, the answer should read, "There are pumping lines there and distributing lines. As to the pumping lines there would be no services off of them because they could not get services." The word "services" should be "service."

The Master: Yes, that is allowed.

Mr. Ransom: Page 4690, first question, the figure is incorrectly given as to the net cost of the coal used. Instead of .8955 it should be .1955.

26873 Mr. O'Brien: I object to that.

The Master: That will be allowed.

Mr Ransom: Page 4767, folio 14301, the year in the answer is incorrectly given. It should be, "No, as of 1912."

The Master: I will not let him change that. I will let him say that since he gave the testimony he wants to change it. Do you want to change your testimony where you said, "No, as of about 1915," and make it, "No, as of about 1912"?

The Witness: Yes.

By Mr. Ransom:

26874 Q. What time was that holder built?

A. In 1912.

Q. If anything else is shown by the testimony you want to correct your testimony to that extent?

A. I do.

Mr. Ransom: Page 4768, folio 14304, the answer should be "Consolidated Gas Company has one, at 132nd Street."

The Master: Yes, that is allowed.

Mr. Ransom: Page 4783, folio 14349, twelfth line, strike out the word "million."

The Master: Yes, strike it out.

26875

Mr. O'Brien: I want to suggest that as to the corrections just made through Mr. Woods, we have not received any indication of what the complainant wanted to have changed, and we are going ahead now without preparation, and while some of the changes are due just to errors that creep in through the phonograph, some of them are on vital matters, and amount to polishing up the testimony. I think the time of the Court and counsel should not be taken up in unnecessary changes where the meaning is quite clear, even though the preposition is perhaps mistakenly put in the record. I don't think our time ought to be taken up here. 26876

The Master: I do, go ahead.

Mr. Ransom: At page 1762 of the mimeograph record, third line, the answer should read:

"A. I did not favor them. I did not favor them at all. The demand was such that combined the company had a reserve of a certain amount and the Consolidated's was slightly below the combined reserve, and in my judgment, the Consolidated reserve was sufficient and we would not carry any additional reserve of the New Amsterdam Gas Company. Had we taken the 30,000,000 the charge to the Consolidated would have been greater." 26877

The Master: I will allow the answer to stand.

Mr. O'Brien: Your Honor will recall that I objected to the way in which he was mumbling his testimony and threw it into the record. It was meaningless, and I want the mirror to stand just as it is in the record, the mirror of the witness and the witness's capacity.

The Master: I will let that answer stand.

Mr. O'Brien: That word "combined" is used in just that way. It is a colloquialism in the company.

The Master: I will let it stand.

Mr. Ransom: Exception:

Mr. Ransom: Page 1777, twentieth line, the answer "maximum send out, yes," should read, "A reserve in excess of maximum send out, yes."

Mr. O'Brien: I except to that.

The Master: That answer will stand.

Mr. Ransom: Then I will ask Mr. Woods.

The Master: Yes, you may ask him.

By Mr. Ransom:

Q. What do you mean when you speak of reserve
26879 in connection with maximum send out?

A. The requirements of the plant reserve in excess of the maximum daily send out.

Mr. Ransom: Page 1782, sixth question, the figure is incorrectly given as 39.08.

Mr. Chambers: That is in the question.

The Master: It appears in the answer .6092. The answer gives it correctly.

Mr. Ransom: Page 1835, fourteenth line, in the answer the word "gas" should be changed to "blast" so that it will read, "I think in 1906 one reason for it was that they were operating under a lower blast pressure at 99th Street."

26880 By Mr. O'Brien:

Q. Is that a vital matter in the manufacture of gas?

A. Yes.

Q. Explain that, Mr. Woods. Who regulates the blast or pressure, the gas maker?

A. To some extent, yes.

Q. Where are the records of the blast pressures kept?

A. They may be on the gas maker's sheet.

Q. Are they kept on the gas maker's sheet?

A. The turbines are usually set to give a certain blast pressure.

Q. And you are accustomed to use a certain pressure all the time, uniform?

A. Usually the pressure would be uniform in a given plant.

Q. How does a greater or lesser pressure of the blast affect the economy of gas making?

A. It affects the capacity of the machine.

Q. The greater the pressure the greater the capacity?

26882

A. Right.

Q. Well, take it over the years, would 99th Street run about the same as 21st Street?

A. 99th Street, the pressure is probably a little higher than the pressure at 21st Street.

Q. Why?

A. Because we have a little different type of apparatus.

Q. Does the apparatus at 99th Street require a higher pressure?

A. No.

Q. What are the two types, and why does one require a greater pressure than the other?

26883

A. They don't require a greater pressure. I say we have two different types of blowing apparatus. At 21st Street we use reciprocating engines belted to blowers, and at 99th Street we have a turbine driven blowers which we can get up to a higher speed, with correspondingly higher pressure.

Q. Then the ones at 99th Street are more efficient?

A. They are not more efficient; they give a higher pressure.

Q. You get better results then?

A. It is possible to get a higher make per machine on high blast than you get on low blast.

By the Master:

Q. And you get a higher make at 99th Street than at 21st Street?

A. Somewhat higher.

Q. To that extent they are more efficient?

A. In so far as capacity is concerned; it would improve your generating capacity.

Q. If you produce more gas per machine per day, it is increased efficiency, isn't it?

26885 A. It is increased capacity, to some extent would be efficiency in that part of the plant.

By Mr. O'Brien:

Q. Is the pressure at 99th Street always more than at 21st Street?

A. Yes, I should say it was slightly more; there isn't a great deal of difference.

Q. Over each year?

A. Not a great deal of difference, but there is some difference.

The Master: Over each year?

The Witness: Over each year.

Mr. Ransom: On page 1835, twenty-second line, there is the same correction from "gas" to

26886 "blast."

The Master: Yes, that is allowed.

Mr. Ransom: At page 1845, second question, Mr. Viebrock's name is spelled wrong.

The Master: Yes, that will be corrected.

Mr. Ransom: Page 1859, the second question, the answer reads: "It might go down to 31, 31 1/2; it might go down to 34 or 34 1/2." The answer should be, "It might go down to 31, 31 1/2; it might go up to 34 or 34 1/2."

The Master: That is allowed.

Mr. Ransom: Page 1881, third question, the answer should read:

"The men firing the boilers, the men that make the gas, or runners, the men we call coal up men, men for cleaning the fires, then we have the engineers for running the blowers and exhausters."

The Master: No, if he wants to add anything to the answer as it appears I will let him add it.

By Mr. Ransom:

Q. What are the men called that make the gas? 26888

A. Runners.

Q. Who are the coal up men?

A. The men that coal the generators.

Q. Then, as I have just read it, does that represent the description which you would desire to make of the men who make the gas?

A. Yes.

Mr. Ransom: On page 1911, the answer appears, "The iron mass would probably cost about a cent a thousand." The correct answer should be, "The iron mass would probably cost about one-quarter of a cent a thousand."

The Master: Yes, that correction is allowed.

Mr. Ransom: On page 1917, the answer to 26889
the first question should read:

"All these things are variable, covering the time of year. I am giving you an average condition. I say it might be 9/10 of a cent, it might be 3/10ths. One-half a cent would be a fair operating condition for those things."

Mr. O'Brien: I object to that.

The Master: You want to change "1/10" to "3/10"?

Mr. Ransom: Yes.

26890

The Master: I will not permit that change. He probably said that.

Mr. Ransom: Page 1921, second question, it refers there to the 41st Street plant. It should be 21st Street. There is no 41st Street plant.

The Master: Yes, correction allowed.

Mr. Ransom: Page 1922, fourteenth line, the witness answered the Master's question, "No, absolutely." The witness says the correct answer should be "Yes."

Mr. O'Brien: I object to that. It is a diametrically opposite answer to what he gave. He even was so sure that he said "Absolutely."

26891

Mr. Ransom: He may have said, "Yes, absolutely."

Mr. O'Brien: You didn't ask him to put "Absolutely" in.

The Master: The Master directs that the record be corrected by striking out the word "No." The witness's statement was, "Absolutely."

Mr. O'Brien: Your memory is fresh on that?

The Master: You will see when you go along.

Mr Ransom: Page 1925, in the eighth line, "coal heaters" should be changed to "coal handlers."

The Master: Yes, that correction is allowed.

26892

Mr. Ransom: Page 1926, fourteenth line, "$500 a year" should be changed to "$4,500 a year."

The Master: Correction allowed.

Mr. Ransom: Page 1933, in the nineteenth line, "central parts" should be changed to "Central Park."

The Master: Yes.

Mr. Ransom: Page 1935, tenth line, "filling machines" should be changed to "milling machines."

26893

The Master: Yes.

Mr. Ransom: Page 1954, the second question, "What part of it is applicable items is a pure gas, isn't it?" should be changed to read, "What part of it is applicable to items is a pure guess, isn't it?"

The Master: Correction allowed.

Mr Ransom: Page 1961, thirteenth line, the answer should read:

"No. We took the combined requirements of each company. Let me go back just a minute and I will get that straightened out. It was believed, and I made the recommendation, that of 26894
this unaccounted for gas three per cent of it was attributable to losses from condensation."

The Master: That is the way it reads here.

Mr. Ransom: Page 1961, twenty-second line, the question should read, "Being the difference between the make and the sold."

The Master: All right.

Mr. Ransom: Page 1965, the answer to the first question should read, "Yes, but it will be almost two times that by the end of the year."

The Master: No, I will let the witness state that statement was an error if he wants to make it "almost two" instead of "six."

26895

Mr. O'Brien: The whole trouble is, your Honor, I would have to cross-examine this man all over again—recalling a witness here at this hour in the guise of correcting minutes.

Mr. Ransom: I will withdraw it; it is mathematical. I think it appears on the face of it.

Page 1968, 12th line, in the answer insert the word "or" after the word "renewed."

The Master: Yes.

Mr. Ransom: Page 1981, 21st line, in the question the word "fences" should be changed to "benches."

26896

Page 1989, third line, the answer should read, "375 to nine or ten hundred grains per one hundred cubic feet of gas," instead of "3.75 and"

Page 2017, 12th line, what the stenographer has there given variously as "Ronner" and "Bronner" should be "Bronder." Also on the 6th line, the word "stuff" should be "coke."

Page 2024, 17th line, the word "1st" should be "last."

Page 2025, 17th line, the word "sacks" should be "stacks."

Page 2037, second line, the word " coal" should

26897 be "coke."

Mr. O'Brien: Your Honor, he has got a ream there yet.

The Master: We will finish it.

Mr. Ransom: Page 2103, 2nd line, the answer should be, "It should run from 1.4 to 1.70."

The Master: Yes.

Page 2122, 15th line, the answer should read, "It was in use in the plant at 44th Street" instead of "42nd Street."

Mr. O'Brien: Objected to.

The Master: I will allow it.

Mr. Ransom: That conforms with the testi-

26898 mony. The same way on page 2122, 18th line, "never at 42nd Street," should be "never at 44th Street."

The Master: Yes.

Mr. Ransom: Page 2211, the stenographer has incorrectly indicated what the witness said as to the time when more oil is used—the first question at page 2211. The answer should read, "Well, usually in the summertime, yes. There might be some conditions when it might be in the wintertime, but take it as a whole, you are using more oil in the winter."

26899

Mr. O'Brien: I object to that, your Honor. I think it should stand just as he gave it to us.

The Master: I will allow the correction.

Mr. O'Brien: Even though the answer is strange it is in keeping with the answers of the witness.

Mr. Ransom: Page 2257, 10th line, the word "sold" should read "told."

Page 2258, third line, the word "it" should read "they."

Page 2282, first line, what is given there as 67th Street, of course should be 65th Street.

26900

Page 5209, of the print. We are back to the printed pages now. In the 14th line the sentence there beginning should read, "Having got this from all the companies."

Page 5233, first question, "The next subdivision seems to be in three columns, the heading being 'Gas Made'" and not "Gas Mains."

The Master: Yes.

Mr. Ransom: Page 5236, second question, should be "11.8 per cent of illuminants" instead of "aluminum."

Page 5239, fourth question, "Anthracite, pea, buckwheat, slack pounds" instead of "slag pounds.'

26901

Page 5240, seventh question, "Then you have 'Tank Pounds Fuel,'" the heading is given there as: 'Tank Pounds Fuel" and the heading is "Tank Boilers Pounds Fuel."

Mimeograph page 2477, 12th line, the answer should read, "The Witness: The company's test."

Page 25, 3rd line, the reference to "79th Street" should read "99th Street."

Page 2560, 6th line, the reference to "999th Street" should obviously be changed.

26902

Page 2675, first paragraph, a typographical error is there as to the year: "By reason of increased efficiency we were able to get along with fewer men than in 1906. The amount of gas made in 1918, however, at these two stations, is probably less than it was in 1906."

The Master: Yes. On that same page 2675 of the mimeograph copy, 8th line from the bottom the statement should be "Objection sustained" and not "Question sustained."

Mr. Ransom: Page 2805, first line, apparently an answer of the witness is attributed to the

26903 Master.

The Master: Strike out the words "The Master."

Mr. Ransom: Strike out the words "The Master" and insert "A."

Page 2810, 6th line, the question and answer is confused. It should read "4.75 cubic feet to the pound of coal."

The Master: The way it reads now is "As I stated before, Mr. O'Brien, you can run in making it 4.75 pounds or cubic feet to the pound of coal, or you may run to 5.25 or 5.3." The word "or" should be stricken out after "pounds."

26904 Mr. Ransom: Page 2864, 18th line, "the patents" should be "the payments."

Page 2871, 8th line, the first word on this line should be "the" and not "they."

Page 2928, 22nd line, in the answer "breakdown" should read "breakage."

The Master: Yes.

Mr. Ransom: Page 2929, 20th line, the word "clinking" should be "clinker."

On the 22nd line, the word "coke" should be inserted after the word "house."

26905

Page 2936, 6th line, the answer should be, "If you took all of the eight or twelve months and added them together."

Page 2958, last line on the page, the word "feeders" should be "figures."

Page 2997, the answer to the first question, "I do not know how he got these figures" instead of "I do not know here he got these figures."

The Master: What he said was, "I do not know where he got his figures." Substitute the word "where" for "here."

26906

Mr. Ransom: Page 3010, 5th line is one that I corrected with Major Clark.

Page 3015, last answer should read, "The Consolidated Gas Company on main mileage in some cases has as much as twice per mile of main as some of the companies."

The Master: That is what he says.

Mr. Ransom: Strike out the word "that".

The Master: "On main mileage in some cases"?

Mr. Ransom: Yes.

Page 5914, 18th line, the answer should be corrected to read, "and you cannot get the material through it" instead of "the gas through it."

26907

Mr. O'Brien: Objected to.

The Master: Allowed.

Mr. Ransom: Page 5915, 3rd line, the sentence in the answer beginning "If you have got proper condensing and scrubbing apparatus in coal gas production, your coal gas is supposed to be free from everything but sulphur when it gets to the purifiers." That is what he testified, as I heard him.

The Master: Yes.

Mr. Ransom: Page 5935, 12th line, the answer of the witness should read, "I do not know what this figure is. My recollection of coal gas cost at Astoria for 1918 was" instead of "1910." That is all with Mr. Woods.

The Master: Mr. Chambers, do you want to ask any questions of Mr. Woods?

Mr. Chambers: Yes.

The Master: Read off those questions.

By Mr. Chambers:

26909 Q. When were the two 250,000 cubic foot holders at East 17th Street last regularly used for gas storage purposes?

Mr. Ransom: This is over my objection and exception, the same as made yesterday.

The Master: Yes.

Mr. Ransom: Calling the witnesses on matters that are part of the defendants' case, and going into the defendants' case at this time, and not cross-examination.

A. That referred to the two holders on East 17th Street?

Q. It did.

26910 A. The use was suspended on or about October 25, 1915.

The Master: Next question.

Mr. Ransom: That is not quite the answer to the question.

The Master: Why not?

Mr. Ransom: When were they last regularly used, is what the question calls for.

Q. Did you use them before that? How long before that did you start using them?

A. We stopped using them about October 25, 1915. On or about that date.

By the Master:

Q. That is when you stopped using them regularly?

A. Yes, sir.

Q. You stopped using them altogether?

A. At that time.

By Mr. Chambers:

Q. They were never used after that?

A. No.

Q. When were the two 300,000 cubic foot holders and the four 325,000 cubic foot holders at West 65th Street last regularly used for gas purposes? 26912

A. On or about May 4, 1917.

Q. That is, you never used them after that time?

A. No, not regularly.

Q. When was the 300,000 cubic foot holder at East 99th Street last regularly used for gas storage purposes?

A. The use for gas purposes, was suspended in April, 1914, since which time it has been used for oil storage.

Q. But never since that time for gas storage?

A. That is right.

Q. When were the six 350,000 cubic foot holders at East 14th Street last regularly used for gas storage purposes? 26913

A. About June 16, 1917.

Q. They have never been used since that time?

A. For gas purposes, no.

Q. When were each of the four holders at West 42nd Street last regularly used for gas storage purposes?

A. One of the four holders at 42nd Street has been used continuously and is being used today. The active use of three of these holders was suspended in the fall of 1915, although they have been used periodically since that time, but not regularly used.

Q. This one that is used, you spoke of, is that used by the Consolidated Gas Company?

A. It is.

Q. As to what holders owned by the Consolidated Gas Company can it be said that the gas therefrom is sold only to consumers of the Consolidated Gas Company?

Mr. Ransom: I think that was gone over yesterday with Mr. Carter.

The Master: I think so, but I will let Mr. Woods answer that. Is there any holder you
26915 can say that gas goes directly and only to the consumers of the Consolidated?

The Witness: I cannot.

The Witness: There is none.

The Witness: There is none.

Q. The 17th question, speaking of the East 63rd Street holder, boiler and pump house, when was that leased, or is it leased by the Consolidated Gas Company?

Mr. Ransom: I object to the question.

The Master: If Mr. Woods knows, he can state.

A. I do not know.

26916 Q. Where does the gas come from which enters the Consolidated Gas Company's holder at East 63rd Street?

A. The general transfer system.

Q. That is, it might be anybody's gas?

A. Yes.

Q. You do not identify the gas?

The Master: Or everybody's gas?

The Witness: That is so.

Q. It might be the Astoria, Standard, Mutual or anybody you are getting gas from?

A. It might.

Q. Where does the gas go from this holder at East 63rd Street?

A. Into the general distributing system.

Q. Everywhere?

A. Yes.

Q. It might go to the Standard's consumers?

A. Quite likely.

Q. Or the Mutual's consumers?

A. Quite likely.

Q. Or any of the allied companies' that have been mentioned here?

A. That is so. 26918

Q. That are on the system?

A. That is so.

Mr. O'Brien: Mr. Woods, on that point, now, at the testing stations—

Mr. Ransom: May I ask what is now taking place? Is Mr. O'Brien also making Mr. Woods his witness?

Mr. O'Brien: This is a little additional cross-examination.

Mr. Ransom: This is not cross-examination.

The Master: It is not cross-examination at all. Yours is not, Mr. Chambers, and this is not. 26919

Mr. Chambers: Mine is over with.

The Master: What do you want to ask?

Mr. O'Brien: If your Honor does not consider it cross-examination I will not insist—

The Master: What do you want to ask?

Mr. O'Brien: I wanted to ask him right on that point about the testing stations. I do not want to ask a question if it is not cross examination?

The Master: What testing stations?

26920

Mr. O'Brien: He says now that as to certain holders it is anybody's gas. It may have been produced in one plant or all the plants and mixed by various companies.

The Master: Yes.

Mr. O'Brien: I want to ask him on that point as to the testing stations of the city.

The Master: Yes.

Mr. O'Brien: Whether or not certain gases do not go through certain mains in the testing stations that are the gas of the complainant company and the other companies as indicated on

26921 those mains.

Mr. Ransom: I object to the question.

The Master: I will let Mr. O'Brien bring it out.

Mr. O'Brien: I do not want to ask the question if it is considered that he is my witness. I will make him my witness in due time.

The Master: Yes, he will be your witness.

Mr. O'Brien: And he will have company on it, too.

The Master: You don't want to ask him.

Mr. O'Brien: It is a matter of having a bearing right on this, and I think your Honor ought

26922 to know it.

The Master: I will rule it is new matter, and if you do not want to press it, the question is withdrawn.

Mr. O'Brien: Your Honor stated we could bring him back for further cross, and it is a matter that has to do with the witness's direct testimony.

The Master: I am going to let you ask it. Go on now. The gas that goes through the city testing stations is combined gas?

26923

Mr. O'Brien: That is not a direct question, is it, your Honor? He is not considered my witness when you are asking it?

The Master: No, it is cross. Does this gas go through the city's testing stations—is it combined gas?

The Witness: Yes.

The Master: In other words, you cannot identify any particular gas that goes through the testing stations?

The Witness: We cannot.

The Master: Is that what you want?

Mr. O'Brien: Yes. 26924

The Master: Let me ask this: What proof is there in this case that the gas made by the other companies, that you borrow, is 22 candle power gas?

Mr. Ransom: What proof is there in this case at this time?

The Master: Yes. There is proof that the Consolidated Gas—

Mr. Ransom: The defendants here have pleaded as a defense that it is not.

The Master: Then you say there is no proof as to any company except the Astoria?

Mr. Ransom: The proof that it complies with the law, and there is an affirmative defense here, the only defense that is charged. 26925

The Master: I have asked a perfectly simple question. There is evidence in this case that the Astoria plant produces gas of 24 candle power at the works, at the 99th Street station and the 21st Street station of the Consolidated Gas Company, there is proof that the gas produced is in excess of 22 or 23, whatever it may be, but there is no proof that the other gas that comes into this transfer system is of a certain candle power when made.

26926

Mr. Ransom: There is proof of the quantity of oil used by the other companies.

The Master: That don't prove anything to me. All I am doing at this point is this, I am directing your attention to this notion that flashed through my mind while I was thinking of the testimony now going in. There isn't any proof, in my judgment, in this record, that the gas made by the New Amsterdam and the Standard and the Mutual is in excess of 22 candle power. If you take the position that that is an affirmative defense, that is one thing; if you believe that it is

26927 part of your proof, then you better supply that proof before you get through.

Mr. Ransom: I will take into consideration what your Honor says about it.

Mr. Hayward: May I ask your Honor a question?

The Master: Yes.

Mr. Hayward: Is there anything in this record touching these particular plants, even Astoria and the plants you have enumerated, to show that in your opinion the company has complied with the law except the testimony as to the condition of the gas when it was manufactured at

26928 the plant?

The Master: No, but I shall take that in connection with Mr. Woods' testimony that gas of a certain candle power, of 23 and a fraction more, at the works, will test and must test 22 at a mile or more away from the works.

Mr. Hayward: But there isn't any proof of that.

The Master: No, but I shall rule that there is sufficient testimony in the case.

Mr. O'Brien: You mean there is sufficient proof in this case?

26929

The Master: That is what I say.

Mr. O'Brien: I shall have something to say about that, in a minute.

The Master: Not very much.

Mr. O'Brien: It only bears out what I have in my mind, your Honor, and I am going to say it in a few minutes.

The Master: You will not say anything that I have already said.

Mr. Chambers: Do you rest?

Mr. Ransom: I have a few questions on cross-examination of the witness Mr. Woods.

26930

The Master: Cross-examination?

Mr. Ransom: I judge it is such.

The Master: On this new matter that was brought out?

Mr. Ransom: Yes.

The Master: Go ahead.

Mr. Chambers: I do not concede these questions I have asked are direct examination.

The Master: I have ruled that Judge Ransom wishes to interrogate Mr. Woods about this matter that has just been brought out by you, and he can go ahead and do it.

26931

Mr. O'Brien: Will you permit me to quiz the witness about these testing stations?

The Master: What more do you want to ask?

Mr. O'Brien: As part of the cross-examination.

The Master: What more do you want to ask him?

Mr. O'Brien: There is gas turned over to the City of New York at these testing stations.

The Master: Yes.

Mr. O'Brien: The City of New York has made tests, they have been sending to these companies the results of the tests.

26932

The Master: Yes.

Mr. O'Brien: Now, from what the witness states, there must be some misrepresentation.

The Master: No, I will rule it is sufficiently covered.

Mr. O'Brien: Well, I will ask the questions, and you can rule.

The Master: No, I have ruled I won't let you ask any more.

Mr. O'Brien: Well, I will make the record I desire at this time.

The Master: I won't let you make any more

26933 record.

Mr. O'Brien: I desire as a part of the cross-examination of the witness, under the approval made by the Master of our recalling the witness for further cross if it was useful matter, I desire at this time to ask the witness as to the layout of the pipes or mains of the various companies, including the complainant company, in the system at each testing station where the City of New York makes its tests of the gas of the complainant company and the other companies, whether or not these mains were not turned into this system with the representation by the complainant company that they conveyed as through those

26934 testing stations the gas only of the complainant company and of the affiliated companies as indicated.

The Master: The Master rules that the question of the testing of gas is sufficiently covered.

Mr. O'Brien: I except to your Honor's ruling refusing me permission to cross-examine the witness as to these subjects.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Woods, which one of the holders at West 42nd Street is it that you say is still in use?

A. No. 3 Holder.

Q. For what purpose is that being used?

Mr. O'Brien: Objected to as not rebuttal, covered in the witness's direct testimony.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. It is used as a storage or a relief holder for the manufacture of gas at the 42nd Street station.

26936

Q. That has been continuously in use?

A. It has.

Q. When were the other three holders withdrawn from service, if you know?

A. It was reported to the Accounting Department as a withdrawal as of October 31, 1919.

Q. Their use from 1915 down to that time had been intermittent rather than continuous?

Mr. Chambers: I suggest he describe the use if he knows.

The Master: He has told us.

Q. Is that the case?

A. Right.

26937

Mr. O'Brien: I move to strike that out, the intermittent part.

The Master: Motion denied. He has already said it was, in answer to your questions.

Q. With respect to the East 14th Street holders, when were they withdrawn from service, if you know?

Mr. O'Brien: Have you got to have a memorandum to tell us that simple thing, Mr. Woods?

Mr. Ransom: I object to the interruption of counsel.

Mr. Chambers: That has already been answered, hasn't it?

The Master: When was it a formal book withdrawal rather than a suspension from use?

Mr. Ransom: A withdrawal from the company's property investment.

Mr. O'Brien: He doesn't know that.

The Master: We will find out whether he does or not.

A. It was reported to the Accounting Department—

The Master: By your department?

The Witness: By the Engineering Department, recommending withdrawals as of December 31,

26939 1917.

Q. What was the date that you told Mr. Chambers was the date of the suspension of use?

A. About June 16, 1917.

Q. Were they available for use up to the time of their withdrawal?

Mr. Chambers: I object to that as incompetent.

The Master: I will allow it.

A. They were.

The Master: Could they have been used, as a practical proposition?

The Witness: They could.

26940 Q. But they were not regularly used after this June date in 1917?

A. That is right.

Q. And that is true of all six holders?

A. That is right.

Q. Now, how about the holders at West 65th Street, when were they withdrawn from service?

A. Recommendation of withdrawal was made as of December 31, 1918.

Q. And what did you tell Mr. Chambers was the time of suspension?

A. In May, 1917.

The Master: Were they standing there all that time?

Mr. Chambers: I did not ask him anything about the West 64th Street holders.

Mr. Ransom: Yes.

Mr. Chambers: Where do you see any such question?

Mr. Ransom: The second question.

The Witness: They were standing there until some time in the fall of 1918.

Q. And after that date on which their regular use was suspended, were they available for use? 26942

The Master: That is what he has just said, they were standing there until the fall of 1918, wasn't it?

The Witness: Right.

The Master: I suppose they could have been put into use up until the time they were removed?

The Witness: Some time in the fall of 1918.

Q. And as to the two 250,000 feet holders at East 17th Street, when were they withdrawn from service?

A. The recommendation of withdrawal was as of October 31, 1919.

Q. And they were withdrawn? 26943

The Master: You reported them to be withdrawn, you don't know whether the books carried them that way or not?

The Witness: No.

The Master: As to all these entries where you say recommended for withdrawal, all you know is that your Engineers Department reported to the Accounting Department that those were withdrawn?

The Witness: That is right.

The Master: But whether they carried them on the books or not you don't know?

The Witness: No.

Q. After that date of suspension of use, were they thereafter available for use?

A. They were.

The Master: By that you mean they were there and could be put into shape to use?

The Witness: They were.

Mr. Ransom: That is all for this witness.

26945 WALTER R. ADDICKS, recalled.

RE-DIRECT EXAMINATION BY MR. RANSOM:

Q. Mr. Addicks, you have gone over your testimony as given by you, and the printed transcript thereof?

A. Yes.

Q. And you find certain corrections necessary to make the transcript conform to your testimony as given?

A. Yes.

Q. Can you indicate what there are?

A. Page 3777, folio 11,330, at the end of it it says, "Latterly I have had particular charge of the building of the garage of the company." It should read
26946 "Latterly I have had particular charge of the 15th Street building and of the garage of the company."

The Master: Allowed.

Q. Page 3777?

A. Same page, folio 11,331, at the end of the page it reads, "I have, not only oil, but also certain residuals, excluding coke." It should read, "I have, not only oil but also the sale of certain residuals."

Q. Page 3786.

A. Folio 11,358, it says there, "And we get satisfactory results in turning that gas oil into illuminating

gas that will carry forward in the business as we burn it." I think I said, "That it will carry forward in the gas until we burn it."

The Master: That is allowed.

Mr. O'Brien: I object to that as not an obvious error of the stenographer.

The Master: Objection overruled.

Q. Page 3789.

A. Folio 11,365, near the end of the folio, the answer is, "That is a period of a year and a few months," and it should be "three years."

The Master: And a few months? 26948

The Witness: Yes.

The Master: Allowed.

Mr. O'Brien: Same objection.

The Master: Allowed.

Q. Page 3801.

A. Folio 11,402, about the middle, "lighting garages" should read "lighting charges."

The Master: Allowed.

Q. Page 3805.

A. Folio 11,415 should read "My chief clerk or secretary," instead of "of secretary."

Q. Page 3820.

A. Folio 11,458, about the middle of the folio, the answer is, "Oh, the Consolidated only. .6515 for 21st Street". It should be ".065515". 26949

Q. Page 3921.

A. Folio 11,459 in the answer ".0618" the word "cents" should appear.

The Master: Allowed.

The Witness: In other words, it is that portion of a cent.

The Master: Yes.

The Witness: And the same thing in folio 11,460, should be ".721" in place of ".06721," and the word "cents" should appear.

Q. Page 3900.

A. The Master's question in folio 11699, appears as follows, "His average for that year was 4.045768, for 4 1/2 cents."

The first figure ought to be ".045768."

The Master: Yes, that is apparent.

Q. Page 3901.

A. Folio 11703, it reads, "Yes. This indicates
26951 about three and one half cents for a portion of the gas." It should be "oil."

The Master: Yes.

Q. Page 3904.

A. Folio 11710, it reads, "In your contract here, Exhibit 318, I see that for a gravity of 28 the price was .25, and for a gravity of 34 the price was 4.785 cents." In place of ".25" it should be "4.29"; and in place of "4.785", it should be "4.875".

The Master: Yes.

The Witness: That correction is in the question.

Q. Page 3905?

26952 A. Folio 11,714, the witness says, "Prior to the date of the statute it was 22 candle power." It should read, "20 candle power."

The Master: Allowed.

Q. Page 3948.

A. Folio 11843, next to the last word it says, "expert oil," and it should be "export oil."

Q. Page 3997.

A. Folio 11949, the first answer "That has happered, and balances have been made based on that very thing". It should say "allowances" instead of "balances".

The Master: Allowed.

Q. Page 4012.

A. Page 4000, folio 11,999, near the end of a long answer it says, "And indicate the depth of the water in the gauge glass", and it should be "oil".

The Master: In the oil glass?

The Witness: The depth of the oil in the gauge glass. We are speaking of an oil tank.

The Master: The depth of the oil?

The Witness: In the gauge glass.

Q. Page 4012.

A. Folio 12034, the last answer at the end reads, 26954
"And I would rather have it corrected by someone else," and I think it is "corroborated" and not "corrected."

The Master: Yes.

Q. Page 4024—

Mr. O'Brien: You mean that you would change "corrected" to "corroborated"; you do not mean—

The Witness: I think I said "corroborated" and not "corrected."

Q. Page 4024.

A. Folio 12071, in the first answer it reads, about the middle, "And put in new grate fires", and it should 26955
be "new grate bars".

The Master: Allowed.

Q. Page 4026.

A. Folio 12,076, in the second answer, "I was there under Mr. Theodore N. Ely as General Superintendent, and under the Chief of the Operating Department, I have forgotten his name for the moment. I spent two years in connection with drawings and on cars—" "Operating" should read "drafting" department.

Q. Page 4027.

A. Folio 12,081, in answer to the question, "The Boston Consolidated was organized by J. Edward Addicks, I suppose, was it." the answer said, "It was." and the answer should be "It was not."

Q. And you so testified at that time?

A. Yes, sir.

Q. Page 4033.

A. Folio 12,098, an answer about half way down, "As a result of that, we put up the low type of apparatus." It should be "Lowe".

Q. Page 4043.

26957 A. Folio 12,127. "Q. Have they always been called directors," I am quite sure that the question was, "Have they always been called trustees."

Q. Page 4089.

A. Folio 12,265, the answer is as follows: "Well, they could supply all our requirements, instead of dealing with the Standard Oil Company, where the Standard Oil Company, would have to be a middleman to some extent," the words "of New York" should appear after the words "Standard Oil Company."

The Master: I will allow it. That is in line with what had gone before.

Q. Page 4095.

26958 A. Folio 12,285, the second line, "Six days' notice" should read "60 days' notice."

Q. Page 4105.

A. Folio 12,313, the answer is, "I should expect that." My best memory is, your Honor, that I said, "I should not expect that," and the text on both sides will indicate it.

The Master: I will allow the correction.

Q. Page 4109.

A. At the end of folio 12,327, the answer in regard to what is a heat unit, "It is the amount of heat that is in a cubic foot of gas at the maximum density of water,

about thirty-nine degrees." That answer means absolutely nothing, and if I said it, I said it, but I cannot believe that I made that reply in that shape.

The Master: What do you want to add to it?

The Witness: The proper answer should be, "It is the amount of heat required to raise one pound of water one degree Fahrenheit at the maximum density of water, about thirty-nine degrees."

The Master: In this connection, the answer that the witness gave at folio 12,327 will stand, but the record will show that the witness now 26960
makes this explanation.

Q. Page 4151.

A. Folio 12,452, about the middle, "A. I don't know the exact time they use in the Chief Engineer's office." That should read "exact title." It is referring to a book.

Q. Page 4159.

A. Folio 12,476, in the answer, "They may have some of the tanks there that were used at the time the tank was running," should be "plant was running."

The Master: Allowed.

Q. Page 4166.

A. Folio 12,497, "A. I have the tabulation totalling 26961
172,459,690 gallons" should be "272,459,690 gallons."

Q. Page 4326.

A. Your Honor's question on folio 12,977, you referred to, "Would there be more or less ammoniacal liquor," and the answer is, "Yes." I think the question was "There will be more or less liquid ammonia or aqua ammonia," because it is the material which is obtained from ammoniacal liquor.

The Master: That will be allowed.

Q. Page 4340.

A. Folio 13,019, the last answer, the last line says, "It is sometimes called benzoloid oil," it should be "benzolized oil".

Q. Page 4341.

A. Folio 13,021, in the first answer, "That benzol is returned and put back into the gas after it has been vaporized with the ether, and mingles with the gas and goes out again." It should be, "vaporized with steam."

The Master: Steam instead of ether?

26963 The Witness: Yes.

The Master: That is allowed.

The Witness: Folio 13,022, about the middle, the Master said, "I get the general picture of the gas going into the scrubbers and the air mixing with the gas." It is "oil."

The Master: That is allowed.

Q. Page 4342.

A. Folio 13,026, near the end, "What do you mean by a quality standing." It should be "Quality standard."

The Master: That is in two places there.

The Witness: Yes, two places.

26964 The Master: You say it applies to "quality standard", and you want to change quality standing to quality standard?

The Witness: Yes, sir.

The Master: That is allowed.

The Witness: Folio 13,028, the answer, "The extraction of light oil. It is the only benzole". It should read "It is not only benzole."

The Master: "Not" substituted for "the." That is allowed.

Q. Page 4418.

A. Folio 13,253, the first answer "It was increased during a portion of the washing by virtue of the light oil that is in the gas oil." It should read "the washing by virtue of the light oil that was in the holders."

The Master: That will be allowed.

Q. Page 4529.

A. Folio 13587, instead of the word "he would not received from a period," it should be "recede."

Mr. Ransom: There are just a few more.

Mr. O'Brien: I object to taking up any more time, your Honor, in this case, with a lot of objections unless they are vital changes in the testimony. This dotting an i and crossing a t just to please some one who is going to read these books up in the offices of the Consolidated Gas Company is an absolute ridiculous waste of time. 26966

The Master: Objection overruled.

Mr. O'Brien: Talk about using stockholders' money and wasting it.

HENRY M. BRUNDAGE, recalled.

DIRECT-EXAMINATION BY MR. RANSOM: 26967

Mr. Ransom: On page 2863, folio 8588, "was posted directly in the pay roll" should read, "directly from the pay roll."

The Master: That is allowed.

Mr. O'Brien: I will ask counsel if those were delivered to the defendants at any time, these proposed changes?

Mr. Ransom: Counsel is not able to answer, owing to the absence of Mr. Vilas.

The Master: Proceed.

26968

Mr. Ransom: Page 2878, folio 8634, "owner by the City of New York" should read "owned by the City of New York". Page 2894, folio 8680, "There was an unanswerable question" should read "unanswered question".

The Master: I will allow it.

Mr. Ransom: Page 2902, folio 8704, "on the same terms as it was in 1918" should read "1909". Page 2941, folio 8821, the reference given by the printed minutes to the 41st Street plant should be the 21st Street plant.

The Master: That is allowed.

26969 Mr. Ransom: Page 2945, folio 8833 should read "20 cents a month on every thousand cubic feet of gas sold".

Mr. O'Brien: Objected to.

Mr. Ransom: Not on "every foot of gas sold".

The Master: That is allowed.

Mr. O'Brien: Exception.

Mr. Ransom: Page 2945, folio 8845, "the company charges each month to its legal expenses one half of" should read "one twelfth of" and not "one half of".

Mr. O'Brien: Same objection.

The Master: Allowed.

26970 Mr. Ransom: On page 2957, folio 8,871, one of Mr. O'Brien's remarks is evidently attributed to the Master. I don't know whether you care to change it.

The Master: Which one?

Mr. Ransom: "Why don't you go to—"

The Master: Yes, that should be Mr. O'Brien instead of the Master.

Mr. Ransom: Page 2967, folio 891 should read "the operating ledger account was".

Mr. O'Brien: Objected to.

The Master: Allowed.

26971

Mr. Ransom: Page 2968, folio 8902 should read "set up when the charges were incurred about four years ago."

The Master: That is allowed.

Mr. Ransom: Page 2970, folio 8910 should read "and the stock of the district has gone up", not "out".

The Master: Allowed.

Mr. Ransom: Page 2972, folio 8,914 should read "operating expense cost of setting appliances," not "cost of appliances."

The Master: Yes, that is allowed.

Mr. Ransom: Page 2975, folio 8923 should read "will find the account in our books", not "your books". 26972

The Master: That is allowed.

Mr. Ransom: Page 2975, folio 8923, "gas appliance loan account," it should read, and not "gas appliance acccount".

Mr. O'Brien: Objected to as not the statement of the witness.

The Master: It is allowed as the statement of the witness.

Mr. Ransom: Page 2985, folio 8954 should read "received such appliances repaired", not "to repair". 26873

The Master: That is allowed.

Mr. Ransom: Page 2985, folio 8953 should read "Yes, he is certainly there", not "here".

The Master: That is allowed.

Mr. Ransom: Page 2989, folio 8,966 should read "making 8400 square feet," not "8500."

The Master: That is allowed.

Mr. Ransom: Page 2995, folio 8984 should read "This account is set up by the commission." not "sent to the commission."

The Master: That is correct. Allowed.

26974

Mr. Ransom: Page 2996, folio 8986 should read, "Yes, we credit that to the account, Miscellaneous Rent Revenue, not Joint Gas Revenue," and not "credit that to the account Miscellaneous Rent Revenue and Joint Gas Rent Revenue".

The Master: That is allowed.

Mr. Ransom: Page 2996, folio 8,987 should read "There aren't any details in either of".

The Master: That is allowed.

Mr. Ransom: Page 3003, folio 9009 should read, "1 12 of $26,000 each month" instead of "$25,000."

26975

The Master: That is allowed.

Mr. Ransom: Page 3,004, folio 9,012 should read, "Well, he has asked several times."

The Master: Not allowed.

Mr. Ransom: Withdrawn. Folio 9,044, page 3,015 should read, "Church and McCulloh" and not "Mr. Reynolds."

The Master: That is in the Master's statement, is that right?

Mr. Ransom: I don't know.

The Master: "The Master: Not Churchill McCulloh, but Church & McCulloh."

Mr. Ransom: That isn't Mr. Brundage's recollection of what he said.

26976

The Master: Well, he would not have said Churchill McCulloh. It was Church & McCulloh.

Mr. Ransom: Yes, and not Reynolds. Page 3,022, folio 9,066 should read "these annual audits," not "orders."

The Master: That is correct.

Mr. Ransom: Page 3,023, folio 9,067 should read, "How the audits were conducted," not "orders."

26977

The Master: That is allowed.

Mr. Ransom: Page 3,027, folio 9,079 should read, "Come through sundry creditors," not "debtors."

The Master: That is allowed.

Mr. Ransom: Page 3,027, folio 9,081 should read, "It does not seem to me that an account audited," not "audited account."

The Master: I will allow that.

Mr. Ransom: That is all for Mr. Brundage. I have just a few corrections on the part of Mr. Simpson's testimony of what took place up there that day.

26978

The Master: I do not think that is worth while. What else have you got?

Mr. Ransom: I think that is all, except Mr. Gawtry, who I have not been able to get, and I do not think there is anything very consequential.

The Master: If anything turns up on the part of the other side and they want any corrections, we will look at them and correct them if necessary.

Mr. O'Brien: Your Honor, I want to submit on Monday such corrections as I desire to make. I am going to try and hold them down to matters of importance, and if there are any where the meaning is quite obvious, I will let it stand as it is.

26979

The Master: All right. What else have you Judge Ransom?

Mr. Ransom: Nothing.

The Master: Does the complainant rest?

Mr. Ransom: The complainant rests.

The Master: Have you considered the point I suggested to you?

Mr. Ransom: Yes.

26980

The Master: All right. Now I will hear motions to dismiss.

Mr. O'Brien: Will your Honor allow us a week on the submission of briefs on the motion to dismiss?

The Master: No.

Mr. Chambers: The defendants move to dismiss the bill of complaint herein on the complainant's evidence on the grounds—

The Master: Do I understand Mr. Chambers speaks in behalf of you in making this motion, Mr. O'Brien?

26981

Mr. O'Brien: I concur in his motion, but I want to make some additional reasons.

The Master: No, I won't allow any additional reasons.

Mr. O'Brien: Well, there are some matters that I want to add to the statement.

The Master: No. Are there any grounds for dismissal that you have other than what Mr. Chambers has?

Mr. O'Brien: Yes.

The Master: What are they?

Mr. O'Brien: I haven't heard his yet.

The Master: Haven't you seen his?

26982

Mr. O'Brien: I have seen parts of it.

The Master: Haven't you seen it all?

Mr. O'Brien: No, sir.

Mr. Chambers: No.

The Master: Well then, why do you read on behalf of all the defendants?

Mr. Chambers: Well, because I have told the substance of it here.

The Master: I can't quite understand that. I am not going to permit three counsel to make motions if one counsel has them.

26983

Mr. Chambers: On the same ground. That is all right.

The Master: Does Mr. Chambers talk for you, Col. Hayward?

Mr. Hayward: Yes, sir I have been over it. Mr. O'Brien has not seen what he just showed me, and I think we both wanted it, and I think as Mr. Chambers has it now it covers all the grounds that I would care to move on, although not in the same form, of course, and I would like, if the motion is to be argued, your Honor, however long or however briefly, I would like the reservation made, that if after they get through I want 26984
a fifteen minutes to a half hour on the argument, that I might be allowed to do it, but probably I won't want it.

The Master: I am not going to hear argument on all points, but only on such point or points as I think require argument. Go ahead and state your grounds.

First: That complainant has failed to establish facts sufficient to constitute a cause of action.

Second: That complainant has failed to establish any cause of action.

Third: That complainant has failed to show that chapter 125 of the laws of 1906 insofar as 26985
it establishes a rate to be charged for gas in the city of New York at eighty cents per thousand cubic feet is confiscatory in that it does not allow a fair return on the capital invested in the business of making and distributing gas.

Fourth: That complainant has failed to prove what it cost to make and distribute gas to its consumers.

Fifth: That complainant has failed to prove the amount of capital actually invested in making and distributing gas upon which it would be entitled to a return.

26986

Sixth: That complainant has not shown nor does it claim that it cannot earn and does not earn sufficient to pay seven per cent. in dividends on its entire capital stock, although a large part of this capital stock is invested in the stocks, bonds or obligations of other companies.

Seventh: That complainant has failed to establish beyond a reasonable doubt that chapter 125 of the laws of 1906 is unconstitutional.

Eighth: That complainant has failed to establish that it has complied with all of the provisions of said chapter 125 of the laws of 1906 and has

26987 furnished to the public gas of a lighting capacity of 22 candles.

Ninth: That the evidence produced by complainant tends to establish that it has received an average rate of return from 1906 to 1919, inclusive, far in excess of six per cent.

Tenth: That it appears from complainant's own proof that the average rate of return from 1906 to 1919, inclusive, has not been less than six per cent.

Eleventh: That in order to determine the fair value of the property of complainant used to supply its consumers with gas, and to determine the

26988 fair and reasonable cost of producing, distributing and selling gas to its consumers, it is necessary to consider not alone the property and operating expenses of complainant, but also the property, operating expenses and operating methods of the companies whose stock is all held, or the majority of which is held by complainant, which companies are: Astoria Light, Heat & Power Company, East River Gas Company of Long Island City, New Amsterdam Gas Company, Standard Gas Light Company of the City of New York, New York Mutual Gas Light Company, Central

26989

Union Gas Company, Northern Union Gas Company, The New York Edison Company, The United Electric Light & Power Company, National Coal & Coke Company and complainant has offered no proof, as above indicated, as to the above named companies.

Twelfth: That the constitutionality of the statute in question cannot be properly determined by the facts applicable to complainant, when it appears, as here, that a number of other companies supply gas in the same territory and where it further appears that the distribution system of complainant is intermingled with the above named 26990
companies, and where their manufacturing plants are distributed throughout the same territory, and particularly where it appears that complainant owns more than a majority of the stock in each of the above named companies, and where gas is purchased and sold between these various companies, and where the gas supplied to consumers of complainant is inextricably intermingled with the distribution system of all of the above named companies.

Thirteenth: That it affirmatively appears that complainant has combined with the following companies: Astoria Light, Heat & Power Com- 26991
pany, East River Gas Company of Long Island City, New Amsterdam Gas Company, Standard Gas Light Company of the City of New York, New York Mutual Gas Light Company, Central Union Gas Company, Northern Union Gas Company to supply gas in the City of New York, and enough has been shown by complainant's own proof to indicate that it is really complainant operating under various names, and for that reason the Court cannot determine the consti-

26992

tutionality of the Act in question without ascertaining the fair value of all of the property of the above named companies used in purchasing, distributing and selling gas in the territory commonly occupied.

Fourteenth: The defendants say respectfully they have not had their day in court, such as they feel the Constitution of the United States guarantees them.

We mention a few instances to illustrate:

Common-law proof has been dispensed with as in the case of the books of the complainant.

26993

The right to be confronted with witnesses, and the right to cross-examine them, has been denied.

Cross-examination of witnesses called has been curtailed, limited and, in some instances, stopped completely.

The burden of proof has been erroneously shifted from the complainant to the defendants.

These instances warrant the defendants we respectfully submit, in asking that a mistrial be declared, and that what has been done here be pronounced, what we really think it is, a nullity.

The Master: Now, Mr. O'Brien, any grounds

26994

you want to ask not any argument but any additional grounds?

Mr. O'Brien: Some of the headings of the points already raised by Mr. Chambers are so general as to comprehend perhaps everything that might be said. I would emphasize the fact that the complainant has failed to make the requirements laid down by the United States Supreme Court in every rate case of any importance that has come before it as to the burden of proof—

The Master: Don't argue it.

26995

Mr. O'Brien: They have failed to show beyond a rational doubt the essential points in a case of this character, where they are assailing a statute and seeking to have it declared a nullity. On that matter I do not need to go into detail except to say that it is the uniform position of the Court that a rate case, where a rate is attacked, is taken out of the ordinary category of litigation.

The frank disclosure has not been made which is required in rate cases. I am not going into any argument on it except to assert here as a matter of record that there has not been a frank disclosure; 26996
that under the camouflage of giving us everything they have not done so. They have curtailed the examination by the representatives of the defendants of the books and records and papers. They have so corralled this examination under the supervision of this Mr. Davidson that they have enabled themselves to watch every move made by the defendants, to go over every record, to follow it up, and to take up so much time in delivering the papers that were asked for or requested that there has not been sufficient opportunity given to the defendants to conduct a cross-examination of the complainant's witnesses by having ready access 26997
to all the papers of the complainant.

There has not been furnished to us the inventory which was requested by Judge Mayer on May 16, 1917, on the day on which he appointed the Master. That was brought before the Court subsequently, and I take it that the Court felt that they would meet his demands, and our demands for an inventory. That has not at any time been forthcoming. The examination before your Honor in the offices of the complainant company

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26998

which followed the hearing before Judge Mayer upon our second request for an inventory before him was a futility so far as accomplishing anything was concerned and I think from the expressions made by the Master at that time such an impression was made upon his mind.

There has been another failure here to separate the business of the complainant company from extraneous business. While the complainant took the position as to appliances that it was a necessary part of the business in order to keep the gas industry going, that it was so intimately
26999 connected that they had to carry it on, and that they were giving the consumers the benefit of such revenues as were derived from that business, the fatal error has been made here in not presenting such evidence to the Court, or any evidence to the Court wherein accounts covering all of this branch of the business were separated and segregated in such a manner as to allow the Court to form any kind of a conclusion as to whether or not this was a source of loss or of gain to the consumers and to the company. Our position on that is that they were compelled to keep them entirely separate so that you might
27000 know how far it was a loss to the company, if it was a loss; and if it was a loss, how far such a loss might be justified under the excuse of reasonable promotion of the gas business. That I will not elaborate on here, because I have referred to it in the conduct of the case several times, but it is a vital matter, and I think a fatal error has been made in the failure to set that up.

One of the points raised in our behalf by Mr Chambers relates to the evidence that brings out the connections between the complainant com-

27001

pany and its affiliated companies. If there was no other reason in the case, your Honor—

The Master: I do not want that. That point has been raised; don't argue it.

Mr. O'Brien: I am going to give you a modification of it by elaborating the argument—

The Master: I don't want it. Have you any other points?

Mr. O'Brien: The point I make is this and it is connected with that, relates to the affiliated companies—the point I make is this, that they have failed to bring into this case the revenues derived from the affiliated businesses, the affiliated companies. 27002

The Master: Mr. Chambers has covered that.

Mr. O'Brien: That they have failed to give the consumers in this case the benefit of the revenues from the electric light end of it.

The Master: He has covered that.

Mr. O'Brien: That they have conducted on the one hand an electric light business that has brought them rich profits; that in conducting that electric light business they have invaded the business of the gas industry, and that having done that, having carried on this industry that has meant the decline of the gas industry, they should give 27003 the gas industry the benefit of the profits of the electric light business, which they entirely control.

The Master: That point has been raised.

Mr. O'Brien: The further point on that is this your Honor that if it should be held, if you should hold that you cannot go that far, the very least that is to be expected of the complainant in this case is to come forward with proof that will show—and the burden is on them to show it—that they have not conducted the electric light business, which they entirely control, to the detriment and disadvantage of the gas industry.

27004

The further point I make is this, that in failing to give the gas industry of the complainant company the benefit of the revenues of the investments made in something else than the gas industry of the complainant during the years presented, they have failed to give the consumers the benefit in this case of revenues derived from excess of its other years, the benefit of investments made of excess earnings. In that connection they have failed to come forward with anything to enlighten your Honor as to how far they have taken the profits of other years and use them to make
27005 money, which returns they have entirely eliminated from this case and have not credited to themselves, so far as the records in this case goes, and have not given the consumers the benefit of such returns from investments.

That leads off into many directions. I am not going to pause to argue them with you, but it is a very important branch of this case, how far the profits of other years ought to play a part. In this connection I want to say that it is particularly appropriate in this case, more so than in any other case tried, because they have asserted in their complaint and have used that allegation and asser-
27006 tion in the complaint as an excuse for bringing forward some figures from their books that, under the guise of going value should be allowed in the base upon which a return is to be computed, an element called "going value" which shall be equivalent to alleged deficiencies of the years since the statute was put upon the statute books. Translated into other terms that means that in the shape of adding to the value of the physical property of the company there should be another element of value added which will be equal to the

27007

deficiencies of lean years; in other words, under this guise, that in these years you should make up for the shortcomings and deficiencies of the intervening lean years, only emphasizing what I had to say previously upon the question of tracing the investments made of excess earnings of other years.

I may say that that is a new idea of going value which does not conform to the definitions of going value as laid down by the State of New York, or in any of the decisions of the Supreme Court that I know of.

27008

I add to the points raised by Mr. Chambers, the illegal evidence permitted, the failure to bring forward the books of original entry, the underlying papers and data that are necessary for proving a case of this character; the admission of the books in evidence without the underlying data, a fatal error in this case, we contend. It is not justified by any ruling of any court that I know of, and while an attempt was made by the complainant to try to remedy that from time to time through camouflage, and all the remedy is not in the record, and, therefore, there has been a failure to overcome that fatal error in allowing those books to be received without proving them.

27009

I am not going to go into the details of the proof that was offered, your Honor, but you can go right down from A to Z with the witnesses, from Mr. Alrich to Mr. Carter, and there is nothing in this record, there is scarcely any more in it than there was in the complaint a bird's-eye view of the property, the hasty and hurried and cursory statements made by Mr. Brundage of what the books show, and how they were kept—

The Master: Isn't that an argument?

27010

Mr. O'Brien: It is argument. If your Honor does not care to hear it, I do not intend to force it upon you at this time.

The Master: I don't want it; I want additional points.

Mr. O'Brien: The point I raise is this, in a nut shell that there has not been anybody to put on under oath who has testified to these moneys being spent and how they were spent. We have not had the men who made the gas to tell you how much it cost actually to make it.

The Master: That is all covered by Mr. Chambers.

27011

Mr. O'Brien: The various weaknesses of the proof are so glaring that I am going to pass over them. I shall be glad, if your Honor cares to hear it, to elaborate on it.

The Master: No.

Mr. O'Brien: In regard to the last ground for dismissal that was stated, I join in it, as I do in all the other reasons offered by Mr. Chambers and Colonel Hayward. I would say frankly to your Honor that if you see fit not to discuss the complaint, and you intend to go ahead with it, that we shall assert when your report is submitted

27012

to the District Court, that there has not been a fair trial, on the grounds mentioned.

The Master: That is your privilege, to complain about anything I have done.

Mr. O'Brien: The manner in which the whole trial has been conducted, the indications here and there of preconceived notions, the impress or influence that seem to come in upon your Honor's mind by reason of the general clamor about the high cost of living: the curtailing of cross-examination, the taking over of the witnesses yourself

27013

in countless questions, conducting the cross-examination yourself: the forcing of us on in the summertime and the carrying of the trial through September— the various matters that I have from time to time called to your attention—I believe these are grounds for a dismissal of the complaint. I appreciate that it would take a whole lot of courage and heroism for your Honor to look in upon yourself in that manner, but I feel, with all respect to the Court, that we should say to you here what we are going to say to the District Court to whom the report will be submitted.

27014

The Master: Don't hesitate to say anything to me or about me.

Mr. Hayward: If the Court please, there is one distinct point that I think was not in Mr. Chambers' motion. I thought it was after reading it over. I want to add it. It is one that to my mind has not been covered at least, not in the way that I would express it. It is quite short and I am sure you will not have any objections to hearing it.

That the defendants have not been afforded the opportunity to call for cross-examination such persons in the employ of the complainant as have or might have contemporaneous knowledge as to original entries and underlying data.

27015

The Master: Let me interrupt you there. What do you mean, that you have not had an opportunity to call them for cross-examination? Do you mean, for instance, that you could not have called Mr. O'Brien's ancient friend, De Castro, to ask him about any of the papers?

Mr. Hayward: I don't know who De Castro is. I do not remember having heard of him, but my point is that the books and the records and

27016

the tabulations made from them were not books of orignal entry, and that we did not have the men here whom we could have cross-examined, and who might have known facts material to this case and that the Court went entirely beyond any rule that has ever been laid down in a rate case that I am aware of in allowing these books which, I contend, and did at the time, if your Honor will

The Master: It is perfectly clear in my mind, and I think Mr. Chambers has covered it. What made me interrupt you was that you used the words "were not permitted to call for cross-exam-

27017

ination." I was wondering whether you felt that you had a right to call for the men who made the report and to cross-examine them, and that I had refused you that right.

Mr. Hayward: Certainly I feel that.

The Master: When did I refuse you that right?

Mr. Hayward: They never were put on the witness stand.

The Master: That I understand perfectly, but your point now is that I did not permit you to call them for cross-examination. I will let you call them.

27018

Mr. O'Brien: Well, you have made a ruling this morning, your Honor, right here, that we would have to make somebody our witness—just asking a simple question, and you made that.

Mr. Hayward: I understood your Honor's ruling to be—maybe I did not get it right—that different witnesses we called and that Judge Ransom had not called, we made our own witnesses and we called them on our examination in chief.

The Master: I have not made any such ruling. Those books are all in as if the men had been

27019

called to testify. No application has been made to me to call any of these men as to the entries they made. I will entertain an application now if you want to recall any one of them on that.

Mr. O'Brien: Do you mean you would have it considered as part of the complainant's case?

The Master: Why, certainly.

Mr. O'Brien: That we can bring them down here and it would be considered cross-examination?

The Master: Certainly.

Mr. O'Brien: Then I will ask that Mr. De Castro be produced. I will furnish your Honor a 27020
list of the witnesses we would like called here for cross-examination, and we want the superintendents of every commercial station, and a list from the general office, the heads of every one of the stations, the men who weigh coal, and I will simply submit a list, your Honor, and have them brought here. It is a vital part of this case.

The Master: You would want to cross-examine every witness then, that made every entry?

Mr. O'Brien: No. Your Honor will regulate that so that there cannot be any waste of time.

The Master: If Colonel Hayward will point out to me some particular document or paper or 27021
witness covering a general line that he thinks would be useful to bring down here to cross-examine, I will permit it to be done.

Mr. O'Brien: Then I will, your Honor—

The Master: I am talking to Colonel Hayward now.

Mr. O'Brien: Well, right on that point, I will—

The Master: I am talking to Colonel Hayward.

27022

Mr. O'Brien: We have some witnesses to bring down.

Mr. Hayward: I will say to your Honor that this suggestion which you made this morning—maybe it is my fault, I do not say it is your Honor's fault at all; it may be mine and our other counsel's, but it is so foreign and, in a way, so antagonistic to the whole theory on which your Honor has taken these books and documents—

Mr. O'Brien: Of course it is. Why—

Mr. Hayward: Let me finish, please. It is so entirely foreign to the theory of the case that your

27023 Honor has gone on—in which you might be right, but which we argued in the first place was a dangerous, if not a fatal, departure from the rules of evidence—that this comes to me as a surprise, and to put my finger right now on the people that I would want to call, and be reasonable, why, I would not want to encumber the record. It is the first time, you know, that you have ever said this, your Honor.

Mr. Ransom: He said it at the time the books were received.

Mr. O'Brien: No, he did not say any such thing. You better read the record.

27024 Mr. Hayward: I want you all to keep still, whether you are on my side of the case or the other. I want to present these questions to the Master. If Judge Ransom and the others will keep quiet.

The Master: You gentlemen ever since the beginning have insisted you must call the witness to prove the entries, and I have ruled consistently against you. I have ruled that the books were in evidence as if the witnesses had come and testified to the truth of them.

27025

Mr. O'Brien: The record does not bear you out on that, if I may differ with your Honor. There was a statement where you made a faint reference to the fact that all this stuff was in evidence.

The Master: Colonel Hayward, can you, with your military experience, use any method—

Mr. Hayward: No, I have not got any police sergeants, what they call the ivory hunters, or I would make Judge Ransom and Mr. O'Brien subside.

The Master: I went further than that and indicated that in my judgment all of the underlying data was in evidence and all you had to do was to mark it, that they were all offered, everything in the place was offered by the complainant as part of its book offer. Nobody ever suggested that you should have the right to call Mr. Jones and Mr. Smith down to cross-examine them on something. 27026

Mr. Hayward: If your Honor please that is just exactly where I pointed out, or tried to—I talked long enough about it to make it clear—that your departure here was a radical departure from the method pursued in the Northern Pacific case which Judge Ransom brought here, and that was the very thing that I contended made it a fatality. 27027

The Master: Yes, you wanted them to produce, for instance, Mr. Jones, who would say "I am Mr. Jones. I am employed by the Gas Company, I am a bookkeeper, I made entries in this ledger, I made them correctly at the time," and I ruled against you and I rule against you now.

Mr. Hayward: No, we never took that position your Honor. I never wanted that.

27028

The Master: What was your position?

Mr. Hayward: I took the position that if you wanted to abandon your common law proof you would have to follow the rule that was followed in the Northern Pacific case, that this proof of data must be taken from the data itself, not from secondary evidence. I did not want to bring the men down here who made the entries, I wanted to go back to the original cost data and all these things and make the tabulations from those.

The Master: I ruled against you. I have not changed my mind about it.

27029

Mr. Hayward: Not only that, but the thing that is fatal in this case, even under the extension of the rule, is that the men, the subordinates to whom the officers of the company would have gone to see the bills and all that sort of thing, were not available to us for cross-examination, which is a clear mark of difference between this case and the Northern Pacific case.

The Master: Let me see if I can make myself clear. The ledger refers to a certain pay roll, money paid out for a certain thing. That ledger entry is based upon a report, we will say, of Mr. Alrich, that he did a certain thing at a certain

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time, that he spent a certain amount of money for a certain thing, with certain vouchers. If there is any instance where you can say to me "Our examination would indicate that fatal variances or errors or deliberate misstatements of fact were anywhere made, we want to recall a witness to bring that out," I will do that. I am not going to permit a pure fishing line of questions, such as Mr. O'Brien has in his mind.

Mr. O'Brien: I object to it, your Honor: I object to your statement. I want to say to you right here now that in connection with the ex-

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amination of the complainant's witnesses, from the very moment that I asked a question that was not strictly cross—

The Master: I said I was talking to Colonel Hayward. I may have mentioned Mr. O'Brien's name when I was addressing him.

Mr. O'Brien: All right, if you want to have the record show my statement is incomplete, go ahead.

The Master: Have you any other ground?

Mr. Hayward: Yes, I have this additional ground, your Honor, and I do not think you have quite covered this previous objection of mine. 27032
But my next objection, which I am sure is a new ground—I thought it was in Mr. Chambers' motion, but I guess it was not—is that the complainant had not proved that the instrumentalities and methods used by it in the manufacture of gas in the City of New York are reasonable, modern or scientifically economical within the requirements for a rate case.

The Master: There is one point, I would like to get a little more light on, and that is that question of the proof as to the quality of the gas.

Mr. Hayward: I think that is fully covered by Mr. Chambers' motion.

27033

The Master: Yes, I want to hear Judge Ransom, too.

Mr. O'Brien: Judge, before you proceed with Judge Ransom, but accepting your offer as to these witnesses, let me—

The Master: No, that is not in order now.

Mr. O'Brien: Before you get through with Judge Ransom I would like to have the record cleared up on that.

The Master: You are going to make some motions. Here is a statute which says you shall

27034 furnish 22 candle power gas. Your complaint did not state anything about that. I denied the motion to dismiss on the ground that it was probably covered by the decisions on the demurrers and the motions to strike out, and exceptions to the complaint. In the course of the trial you have offered proof as to the quality of the gas made at 90th Street and Astoria stations, but it is a fact that a lot of the gas furnished to the consumers is gas coming from other plants.

Mr. Hayward: I do not want to interrupt here, but if I may simply have a minute, or less
27035 than a minute, it may be that Judge Ransom can clear it up and it will save any argument I have to make on this motion, or what I have in mind on this thing.

The Master: Go ahead.

Mr. Hayward: I want to tell the Judge the theory of this thing, what I had in mind to argue, and I think it is fair to argue this thing out rather than wait until the case is finally closed. My contention is and will be now and at the close of the case, that has not been remedied, that this is a statute technical in its terms, definite in its requirements.

27036 The statute of this state does not require this company to manufacture 24 candle power gas at Astoria or at 42nd Street or at 14th Street. It does not require it to buy so many tons of coal in West Virginia, or to buy so many gallons of oil from the Standard or any other oil company. It is clear, it is plain, it is simple. It requires this gas to be of a standard of 22 candle power, and so forth, at a point one mile from the plant.

My contention will be, if the Master please, that Mr. Woods' testimony—that is the reason I asked those questions this morning, and of

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course this is entirely excluding the theory of the mixture of gas of other companies, I mean on the merits themselves—Mr. Woods' testimony that the gas at Astoria would test 22 candle power a mile away from the main, is no proof at all, it is of no use and a void thing, a nullity, because once you depart from the simple but technical requirements of the statute you might as well go back to the coal mine, or take any gas expert and say if you put so many tons of coal in a retort of the Smith-Jones Company, under certain conditions, you will get gas which tests 22 candle power even if it is a mile away. Once you de- 27038
part from the theory you are lost in a maze, because if you can go back to a point a mile away you can go as far back as you want and take a mixture of coal and oil and water and say that would do it. That falls short of the requirements of this case, which are plain but very technical.

The Master: I got your point. Look at it first from the standpoint whether it is part of your proof at all. Because if it is not part of your proof at all, then I need not pass upon the merits of this.

Mr. Ransom: It is tendered here by the pleadings as a matter of defense.

Mr. Chambers: No, it is not tendered by the 27039
answer of the Attorney-General as a defense.

The Master: Do not interrupt.

Mr. Ransom: The only question which is raised with respect to the candle power of gas in this case, under the pleadings, is with respect to the period during which toluol was extracted from gas made by this complainant at certain of its plants, such toluol extraction taking place under the proofs in this case by the United States Government, which went in under the sovereign

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war power. That is pleaded; it is pleaded by the answer of the defendant commission in this case and, aside from that issue raised with respect to that period, there is no question raised in this case.

Mr. O'Brien: Well, you plead the statute and the statute has the provision.

The Master: What I am asking is this: I am back to the question raised at the outset.

Mr. Ransom: On the demurrer.

The Master: By Colonel Hayward. Well, was it raised by the demurrer?

27041 Mr. Ransom: Yes, it was raised by the demurrer.

The Master: Because if it was raised by the demurrer, I am not going to reconsider it.

Mr. Ransom: And I pointed out there what I point out now, that it was pleaded as a matter of defense.

Mr. Hayward: We discussed it at the time we made some motion before you, as to whether or not it was. I do not remember it now.

The Master: That is what I asked you. There was some discussion on the motion to dismiss.

Mr. Hayward: It was not decided, I guess.

27042 The Master: At the opening of the case. My impression was if it was part of the matter presented to the District Judge on the demurrer I would not overrule what had been done.

Mr. Hayward: I think Judge Ransom is mistaken when he says our answer covers only the period of time—

The Master: Do not let us get into that for a minute. My mind is running this way. If it is part of the complainant's case, I am confronted with some very serious questions. I think there is a good deal of force in what Colonel Hayward

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says, that although the character of the gas made at the works may be some evidence, it is a question of whether it is the evidence required, whether you could not have tested it at the works and seen whether it is right. I think it goes back to the question as to whether it is part of your case.

Mr. Ransom: Whether it is part of the complainant's direct and affirmative case.

Mr. Hayward: That was a question as to the sufficiency of the pleadings I presented to you now. That does not raise the necessity of the proof. You say that it was raised, probably an inference that they intended to plead that, but 27044
that does not relieve them from the proof.

Mr. Ransom: The demurrer of the defendant Swann was on the ground that the facts stated were not sufficient to make out a cause of action, one of the points raised with respect to this matter, and it was then pointed out that it was a matter which arose not on the face of the complaint but on the face of the answers, and that it was pleaded as a matter of affirmative defense that during a certain period of the year 1918 there was toluol extraction and a failure to comply with the statutory requirements during that period.

Mr. O'Brien: Have you finished, Judge? 27045

Mr. Ransom: No, if you will permit me to address the Court.

Mr. O'Brien: You may take a long draft, go ahead. Take a long breathing.

Mr. Ransom: I have not interrupted you continuously during this trial.

Mr. O'Brien: I ask you that question so I would not interrupt you.

Mr. Ransom: Well, I state I am not finished; I am now engaged in addressing the Court.

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The complainant here is very clear and very sure that this is no part of this case. The question of what the candle power was during this period in 1918 is not within any issue in this case, has no bearing on the present rights of this complainant in a court of equity; it is not a matter which we are called upon in any way to prove.

The Master: I am not so sure of that at all, Judge Ransom. I am not so sure of that at all. If this case had not taken six months to try and did not involve such a tremendous loss of time, and if I were not in error in deciding with the

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defendants, I should hesitate a long time before I denied the motion to dismiss it on that ground. I am inclined, however, to give you the benefit of any doubt there may be and let you take your chances in the higher court, setting this whole case aside by reason of that failure of proof. All I can say about it is it appeals to me as a very serious question, and the question is whether you want to reconsider the point of putting in any proof at all.

Mr. Ransom: I do not.

Mr. Hayward: Judge, what a shape that is going to leave you in and leave us all in here. We

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come to the point, they having the laboring oar, they having to prove their case beyond a reasonable doubt, as is conceded, of the Master making the statement that he has and then saying he is going to let the upper court pass on it. What are you for? I do not want to try this case over again; I would not want to try it if I got a fee of $50,000. If they are entitled to a raise, let us get it through with and settle it. I do not mean any disrespect, but I do not think that is the attitude that the Master should take. If you have this doubt in your mind you have got to resolve

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it in favor of the defendants, and this complainant comes in here with a claim of $20,000 a day and the Master says he has to assume that that is correct. I thought he had to assume just exactly the opposite. Do not let us take any chances on this case. The fact is, as Judge Ransom says, that he will take the chances in the Court of Appeals. Why? Because they complied with the law, but they cannot prove that they did comply with the law during the war period or any time, and that is the reason he is so brave and will take his chances. If the Master agrees with us on this proposition, now is the time to have it 27050
settled once and for all, and you are entitled and we are entitled to have you dismiss this complaint at this time.

Recess until 2:15 P. M.

Afternoon session.

Mr. Ransom: If the Master please, we have had a considerable number of complaints in gas cases in this state that have gone up on demurrer on 27051
the ground that the complaint did not state facts sufficient to constitute a cause of action.

For instance, the Municipal gas case went through the Court of Appeals; the Bronx Gas & Electric case went to the Appellate Division; the Brooklyn Borough case, the Kings County case, as well as the ruling in this particular case on demurrer; yet it has never been suggested in any case except this one that such an allegation or such proof rested on the complainant.

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Here we have a provision of the statute which has been construed with respect to this candle power provision, and which has been maintained to be of a penal character, and it is suggested that the burden rests on this company of coming in and as a part of its case in a court of equity, trying to prove affirmatively the negative, its non-violation of law.

We submit that this company is entitled to the benefit of the presumption which prevails not only with respect to this requirement applicable to this company, but with respect to hundreds of other
27053 requirements that are applicable to this company. This company is presumed, is entitled to the presumption that it has complied.

Another angle of the matter is this: This statute does not impose on this company any duty of making tests a mile from the works, or any duty of making tests at any other place. On the contrary, the machinery of the law as it has been set up by the legislature in connection with this and with other statutes, is that the commission and the city make tests.

Fortunately, perhaps, in view of the doubt which exists in your Honor's mind, although the
27054 complainant is clear that it in no way rested upon this complainant to prove its non-violation of the candle power requirement during the toluol period or during any other time, the situation in this record is against consideration by your Honor whether you will report to the Court that this complaint should be dismissed. Over the complainant's objection you permitted the defendants on what you at the time termed as new matter, to go into the question of whether the company had complied with the candle power requirements during the toluol period and during a portion of the

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time outside the toluol period; and there were read into this record over my objection, in part by your Honor and in part by Mr. O'Brien, and then the whole thing received in evidence, column after column of company tests at 79th Street and at Grand Street and the Bowery, which, under the records in this case, are the points which have been prescribed by law—

The Master: I remember it, and I did it deliberately.

Mr. Ransom: Those are the points which have been prescribed by law and public authority as meeting the requirements of the statute.

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The Master: I remember it. I did it deliberately. I could not understand why the defendants were going into it, and I could not for the life of me understand why you were objecting to it.

The motions to dismiss are denied. Is there anything else you want to say?

Mr. O'Brien: Don't you think it would be proper to hear us on this?

The Master: No, there is nothing in this motion that is new. All of the points raised have been raised from time to time in the complainant's case. I have thought about it, and I am perfectly clear in my mind about every point except this one point; and I am glad that Judge Ransom has called my attention to that tabulation of tests, because that had escaped my memory, and it had escaped me to the point that those tests were made of this intermingled gas.

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Mr. O'Brien: But your Honor, there is no proof before the Court to show that you can determine just what particular gas goes through these testing stations.

27058 The Master: I know that. I have in this record proof, which I brought out myself, from Mr. Woods—nobody else bringing it out, everybody fighting shy of it, apparently—the quality of the gas made and the fact that it would not lose more than a certain percentage, which would carry it to the testing station at least a mile away, to at least 22 candle power, at 79th Street, and at Grand Street and the Bowery, from the 99th Street, the 21st Street and the Astoria plants.

I have in addition proof of the actual tests made at 79th Street and at the works in the tab-
27059 ulation to which Judge Ransom refers, and I am clear that that record is all right.

Mr. O'Brien: You forget the fact that the burden of proof is on them, and here at the close of their case it is not incumbent on us to go out and spend money to make a defense. The question is not whether they have justified the allegations in the complaint, the question is whether they have reached the point with their proof so as to sway the reasonable mind beyond the shadow of a doubt to the conclusion that they have met all the requirements of the statute, and that the statute is confiscatory.

27060 The Master: Under the proof as it now stands, Mr. O'Brien, I am perfectly clear that the evidence leaves no doubt in my mind, so far as it has now gone and as this record now stands, without any proof on the part of the defendant except such proof as they have put in during the complainant's case, that this statute is confiscatory, and that this company cannot make gas, and have not been able to make gas during the past year, for what it is compelled to sell it for; that it not alone gets no return on its investment, but on the

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proof as it now stands, it suffers an actual loss on the cost of making and distributing gas.

Mr. O'Brien: But, your Honor, there are two or three matters in connection with this question of candle power that, before you make up your mind, I want to call to your attention. I submit you cannot pass judgment on that in the twinkling of an eye just because he calls your attention to something that went in. According to the statements that were made, you cannot tell what gas went through that testing station. The tests made of the other companies' gases were not in this record.

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The Master: Yes, they are.

Mr. O'Brien: You cannot tell as to the Standard and the Mutual and the New Amsterdam, they are not in this record.

The Master: Yes, they are.

Mr. O'Brien: They are not.

The Master: They were tested at 79th Street and at Grand Street.

Mr. O'Brien: If you say we are to go forward on that record, and if you are admantine, I won't attempt to argue it with you.

The Master: I did not decide it until my mind was made up. I have been thinking about it all during lunch. I was serious puzzled about it. I had about reached the conclusion that I would not take a chance dismissing the case for fear I might be wrong, although I was inclined to agree with Col. Hayward. My mind was working. It is not a sluggish, dull, standing-still mind. It works. It may not work accurately, it may not be right, but it works. Now, having all the things in my mind as bearing on the matter, and being predisposed to support Col. Hayward's

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27064 proposition, particularly his point that there must be some proof of the tests made at the point required and not somewhere else, I had completely forgotten the incident of the putting in of those tabulations over Mr. Ransom's objection, and my overruling his objection, much to his disgust, and my disgust at his objection, not for the life of me understanding why it was put in. It comes back to me now as clear as a bell, something that I had entirely forgotten, and that convinces me that the motion must be denied. What is the use of arguing it?

27065 Mr. O'Brien: Here is the use of arguing it: I want to bring before you some matters that you have forgotten, or which you did not go into at all.

The Master: For instance?

Mr. O'Brien: I hope I will be given a few minutes without interruption to state them. I am going to say something which is worth saying when I get on my feet.

The Master: On what point?

Mr. O'Brien: There is testimony before this Court by Mr. Woods that it takes 4.1 gallons of oil to make 22 candle power gas. If he is right

27066 in that, then his manufacturing records for the 99th Street and 21st Street stations are a lie, a living lie on that indelible record. If he is right on the one side, then these records are a lie. They say it only takes 3.5 gallons of gas on many days to make 22 candle power gas. It stands to reason that the record is wrong if they say that at 99th Street during the period covered by the books brought into court they were making 24 candle power gas out of 3.56 gallons of oil. I say that from what they have testified to here they have

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been deceiving the City of New York, because in sending certain gases through one pipe and labelling it, "Consolidated Gas," and another "Standard," and another "Mutual," and another "New Amsterdam" they have been deceiving the city authorities who are charged with the responsibility of testing these gases, if they are not the gases solely and only of the companies that are upon the particular mains that are attached to the testing apparatus.

Now, what does that mean? It means, if the statement is correct that there isn't any way of separating the gases so far as the testing stations 27068
are concerned, that there is no way of determining the quality of the gas; and before your Honor can draw the conclusion which you have now hastily drawn—

The Master: I haven't hastily drawn it. I won't stand for that statement.

Mr. O'Brien: If you are convinced beyond a doubt—

The Master: I won't stand for the statement that I have hastily drawn it. There is not a conclusion that I have reached—

Mr. O'Brien: I say it, because he just mentioned it, and bingo, you made your decision. 27069

The Master: Certainly.

Mr. O'Brien: I assert to your Honor that unless you can be satisfied as to what the gas was that was tested, as to the accuracy of the city test, unless you can say now beyond a shadow of a doubt that the gas that went through the pipe that was supposed to be the Consolidated Gas Company's pipe was the gas of the complainant company, and unless you are satisfied that as to all the other companies making gases that are turned into the common supply of gas in the

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mains of the city, as to which other companies there is no proof before this Court, then you are drawing a hasty and erroneous conclusion.

The testimony of Mr. Woods, as Col. Hayward pointed out, his mere statement does not prove it. His expert opinion that if gas is 24 candle power at Astoria it would be of the proper and legal candle power at whatever station that particular gas may be tested at, is not convincing proof. The statement is lacking in proof, and I appeal to you today, even if it requires a great deal of heroism, to face this situation of the proof in this

27070 case and that is the only one of the great many defects in the case.

The Master: It takes a great deal more heroism just now in this town to decide an issue in favor of the gas company than against it.

Mr. O'Brien: I will not stop to debate that with you, but what I want to drive home is this, that that is one of the very grave matters in which they have not given you the proof. Just as sure as you and I and the other people are here present today, this case will come back, and all this effort will have been spent in vain, and it will not be a credit to anybody taking part in the case.

27072 The Master: Well, I can't help it.

Mr. O'Brien: There has been a ground asserted by Col. Hayward that they have not met the requirement of the statute. The statute which is assailed here does not require them to make gas under a water gas system. There are other ways of making gas. The statute does not say they must make it in a particular way.

Is there anything in this case to prove why they didn't make all coal gas? Is there anything here to show that other methods of making gas would be more expensive, and that they have the cheap-

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est way of making gas? No, that whole branch of the case is wanting. You can take up any branch of the case, the accountancy end of it where there was positively grave mistake made in admitting the books; you may take the scientific end of it, boiled down to a few hypothetical questions and answers by Mr. Woods; the statements made by others in the case, which is not even a pleading, proof that has taken them six months to put in. So, I urge your Honor to deliberate on this matter further, to go into the record and see that they are not in equity with clean hands. If what they say is correct then they have been 27074
misleading the city officials who were charged with the responsibility of making official record of the quality of the gas going through the mains. That should be cleared up before your Honor can assert that they have come forward with proof.

There is no assumption that the defendants must hire accountants and spend money; there is no assumption because, for some months, we have been trying to go into some of the records under the conditions that prevailed, to glean certain information.

Then, as to the matter which came up, a matter to which I want to address myself, the ques- 27075
tion of our right to bring men in here and cross-examine. All the way through, in my handling of the witnesses, I have continually asserted that they ought to bring the men who were primarily connected with the vital points of this case, and give us a chance to cross-examine them. I asked them to bring data down, and every time I attempted to go into the matter along this particular line your Honor said that was not cross-examination, was not matter that was brought out on the di-

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rect, and therefore you would not allow me to go into it.

Now, I make formal request that we be given the opportunity to examine, on the theory proposed by your Honor, that we have the right to examine these men who made these records that you say are in evidence in this case, I ask for an opportunity—and I will submit a list to your Honor on Friday morning—that the witnesses be produced here that we may go into the examination of this underlying data which you have asserted is part of the record in this case and is in
27077 evidence, that we have the superintendents of every one of their stations, that we have the superintendents of their branch offices, that we have other officers besides Mr. Addicks, and that we have the superintendent of the garage—

The Master: Wait a minute. I am going to take the superintendent of one station, De Castro. What do you want to cross-examine him about?

Mr. O'Brien: Your Honor, taking your statement of this morning, that you consider all the papers of this company in evidence, I want to put De Castro on the stand and examine him as to the reports that are made daily as to gas made;
27078 the gas making statistics; I want to compare the daily reports made with the daily entries made in the books; I want to bring out to your Honor—let me tell you this so you will know what I am driving at, and I am not going to take up the time of this court unnecessarily—a representative of the defendant went to the gas company's office a few weeks ago and asked for the 99th Street manufacturing book. He was working on that book and making certain tabulations. I had occasion to go to that office, and I looked at the books, and there were the virgin pages of an ap-

parently different book from the one I had in court. I asked him where he got it, and he said from Mr. Davidson. I said to Mr. Davidson, "How is this, you have given this man a book, and it is not the book I have in court?" He said, "Mr. O'Brien, this is a copy of the book. If you want the original I will bring it from the main office." I said, "We don't want to make tabulations and then be told they were made from a copy and not from the original. We would like to have you bring it down." When that book was brought down it was found that the alleged copy 27079
was different from the original, that figures had 27080
been scratched out upon important matters and new figures substituted. I want to find out these things, and find which figures are correct, and I want to find whether they have still extant the original data. I want to find out just what entries Mr. Teele used when he went into these tests, what entries De Castro or the other superintendents turned over to Mr. Teele that he might make these tests as to the reliability of these records. I want to find whether or not they still have the records of the weighing of the coal from delivery to delivery. I want to find out all of the detail that goes into the manufacturing book, and 27081
see whether or not that book from which records are taken into the main office of the company in some form or other in the shape of dollars and cents, how far they are verified—

The Master: I am not going to let you call witnesses for that, after the opportunity you have had of looking through the records up there.

Mr. O'Brien: I make the request, and I submit that it is not a matter that will not take up as much time as your Honor thinks.

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The Master: The application is denied.

Mr. O'Brien: It will be fruitful, and it only bears out what I have been trying to assert, that if you allowed those books in evidence on the theory that we could cross-examine these witnesses, we have not been given that opportunity.

Mr. Chambers: May I say just one word? I have remained silent for quite a long time. In the first place, I want to take an exception to the denial of each one of our motions.

Mr. O'Brien: I have not assumed that that is over. If it is over, I take an exception. I add

27083 to my grounds on the motion to dismiss the complaint the several grounds asserted by Colonel Hayward, and the further grounds I have just now enunciated.

Mr. Chambers: I take an exception to each one respectively, of the grounds stated, including Mr. O'Brien's additional grounds.

The Master: The motion is denied upon each and every ground that was presented by any of the counsel for any of the defendants. The motions inure to the benefit of all the defendants, and the exceptions inure to the benefit of all the defendants.

27084 Mr. Chambers: I do not care to argue any of the grounds, you have denied them. I would have been glad, if you cared to hear it, but I see you don't care to hear it. They call for a reversal of your decision, and you have made your decision.

The Master: I have tried to tell Mr. O'Brien, and I will repeat it now, that I have not reached any hasty conclusion. I have been thinking of the various questions as the case came along. I gave the question of receiving the books in evidence a good deal of consideration. I am not so opinionated as to assume that I am right ab-

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solutely. I could see where, unless a rule was made in this case applicable to the circumstances of the case; this case would possibly not be tried inside of a year, and possibly two. I felt that the law never intended such a result. If there had been an injunction in this case I might have adopted a more liberal rule, it would not have been so necessary to have quick result. It may well be that I have erred in some cases. So far as cutting off cross-examination is concerned I do not think I have made a mistake. So far as calling on counsel to point out the particular items that they wanted to cross-examine about, under the 27086
peculiar circumstances of this case, I am clear that I am right.

I think I am right on the question of the character of the gas furnished. I have not reached any hasty conclusion, I have not simply jumped at any situation and *pro forma* denied the application. I think I am right, but I can see where there may be some debatable questions. I am taking my chances.

Mr. Chambers: The other matter I wanted to speak of in taking an exception was this: I do not understand that you have altered or modified or changed in any way a certain ruling which you 27087
made—which I have not in mind—at the time those books were admitted in evidence.

The Master: No, I have not.

Mr. Chambers: Then with that understanding, that the record, as your Honor made it, and the rulings as your Honor then made stand, I just wanted to make that clear.

The Master: All that I said and all that I intended to say to Colonel Hayward, answering his point that I have not allowed cross-examination of the witnesses who made the entries, was that if

27088 any application had been made to me in the course of the trial and a statement had been made, as was made several times by Col. Hayward and by Major Clark and by yourself—I do not recall Mr. O'Brien ever making any such statement—that you wanted to bring out one or two points from a witness, I should have permitted the recall of the witness for cross-examination. In other words, Mr. Brundage said that Mr. Jones made certain entries in the ledger; if any counsel had said, "Well, we would like to call Mr. Jones to show that he did not make those entries from the orig-
27089 inal data, that he made them from some statement or tabulation of figures given him," I should have allowed it. But I am not going to allow the kind of fishing excursion Mr. O'Brien wanted; therefore, I denied his application.

Mr. Chambers: When you ruled originally you did not rule that we might call for cross-examination any of those superintendents or any of those workmen.

The Master: I did not say anything about it.

Mr. Chambers: The point was when that question was up, and which I tried to urge, that
27090 thereby, permitting those books in evidence, you were admitting testimony of witnesses with whom we were not confronted and whom we did not have the right to cross-examine.

The Master: And that I was depriving you of cross-examination.

Mr. Chambers: Just for that purpose.

The Master: I ruled against you. I still rule against you; I say I did not do it.

Mr. Ransom: That same thing came up with respect to Mr. Armstrong. Mr. Chambers when he saw the book entry demanded that we produce

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Mr. Armstrong for cross-examination on those matters, and we did produce Mr. Armstrong and they did cross-examine him.

Mr. O'Brien: That is all camouflage. You are using that to cover up a ruling the Court made. What is the use of you talking about our having had an opportunity to cross-examine these men? All the way through my examination I insisted that the witnesses be produced. I have been harping on that from the beginning to the end, that these men who made the entries be brought in so that we could cross-examine them. The record bears out my statement.

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The Master: Did you want to say something more, Mr. Chambers?

Mr. Chambers: I think not.

The Master: Did you want to say something more?

Mr. Hayward: As I told you, on Monday morning I would like to ask fifteen or twenty minutes on the argument, and to cite some authorities.

The Master: You said if I wanted to hear argument.

Mr. Hayward: Yes, but when the motion was made this morning we got into an informal argument about it. Your Honor has ruled there were only three things I wanted to raise in reference to this. I do not think I can raise anything that will change your Honor's mind, but they ought to be brought to your attention before you pass on this motion finally.

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The Master: I have passed upon it. I shall expect the defendants to go forward with their proof Monday morning. If on Monday morning you think there is anything else that you want to say, that you think may change my views, I

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will hear it; I will not shut you off. But as these points were made by Mr. Chambers, yourself, and Mr. O'Brien, I thought I was perfectly clear on every point, that I had considered every point, but I was not clear upon the eighth ground of objection as to the quality of the gas or the candle power. On that I have heard discussion and my mind was recalled to the tabulation, and I felt that that answered the doubt that was in my mind.

Mr. Hayward: I do not care to argue it any more, but I do not think those tabulations that

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went into the mixture of that gas washes the dirty hands of this company so as to permit them to have any standing at all in a court of equity. The Master thinks it does, and we argued that point this morning, and I have nothing more to say about it.

I do want to make clear on the record—perhaps it is clear in the Master's mind—my contention has been from the first on the question of bringing these witnesses here, I can ask you to let me have here for examination, the superintendents of the plants, the 99th Street plant and the whole business, the whole commercial agency, but I am confronted with the Master's statement,

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"What do you want them for, do you want to examine the books; you cannot go on a fishing expedition." That has been the way it has been all through.

The Master: That is my attitude.

Mr. Hayward: My idea of that is that it is a deprivation of our rights. If a lawyer in a lawsuit had to detect an error or perjury or falsification of books and data and show that fact and simply call witnesses to corroborate the conclusion or discovery he made from another source,

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why we would have wiped out the value, the only practical value that cross-examination has got. Isn't that so?

The Master: I am glad you asked the question, because I was going to interrupt you to explain my view about it.

Mr. Hayward: Isn't that so as a general proposition?

The Master: Yes.

Mr. Hayward: That that is what cross-examination is for, and there is nothing, within the decisions, that has been offered to us in this case as a substitute for that, which is as valuable to 27098
us or that gives us the protection and our clients the protection that that privilege would have given us which you have denied us.

The Master: You have undoubtedly accurately stated the rule as I understand it in ordinary litigation, where a defendant, or a party plaintiff or defendant, is confronted with a witness on the stand who testifies to a state of facts. You have had no intimation in advance as to what he says, you have had no opportunity of checking up what he says by cross-examination; you have got to go more or less upon a fishing expedition, you have got to roam more or less to try and locate 27099
the weakness of his testimony. But the rule that I made sometime in September when I found that these cross-examinations were interminable, was this: That the defendants in this case had been afforded a form of cross-examination very much better than any cross-examination anybody ever had in an ordinary civil action.

Now, I forced an illustration of it on one occasion when Mr. Chambers took the position that he would not tell me what he wanted to develop by the testimony of one of the witnesses,

27100 I think it was Mr. Teele. I had directed counsel to take Mr. Teele's working papers and make such informal investigation as was deemed necessary, covering a period of three or four days. I think it was over Election Day, if I am not mistaken, or perhaps it was Thanksgiving Day. When we reconvened Mr. Chambers undertook to cross-examine and proceeded to say, "Now, what papers did you look at; where did you look at them; what was the color of the papers"— I am exaggerating in a sense now—and I said, "I will not let you go any further. Have you looked
27101 at these working papers to find out the points of variance you want to develop?" Well, he would not say.

I knew perfectly well he had not, because I could see his notes there, and it was a question of oil, my recollection is—as to how Mr. Teele measured a quantity of oil used, whether he took the amount on the invoices or whether he took measurements of the oil in the tanks. It developed very quickly, and I finally forced Mr. Chambers to it; then he brought out from the witness his method of calculation was based on the invoices without regard to the exact tabulations of meas-
27102 urements of oil in the tank. It was brought out in a minute but might have been brought out in a week by a pure fishing expedition.

In the same way you and your associate, Major Clark, have cooperated in that very respect. Instead of spending a month cross-examining Mr. Teele you have had your men investigate the figures, investigate the basis of his figures, where he arrived at them, where he got them; you have located the weakness of them, the weakness of his figures or the points of attack, and in a very few questions you and Major Clark brought out from

him and other witnesses the point of attack and the alleged weakness of his testimony. And so in this case I will say you have had a better form of cross-examination than the average litigant in a lawsuit. I may be wrong, but that is the view I have. 27103

Mr. Hayward: I take the view that we have not, that we have been deprived of the right under the law, the right that the law gives us, and we deny the right of the Master to say that he will substitute something that is just as good for it. We have never had the opportunity that the law requires to cross-examine the authors of the original sources of these documents and underlying data, which is the very fundamental principle upon which the evidenciary law of documents and books is necessarily based; and I said at the beginning and I say now if we once abandon that polar star we are lost in a maze. I think the length of time this case has dragged out and the useless time spent in this case pretty near confirms the statement that I made, that we would get through more quickly and satisfactorily if we stuck to the rules of evidence that our old people, at whose feet we have been sitting for twenty years, laid down, rather than starting out on some newfangled idea of evidence that Judge Ransom gets. I would ask the Master to bring these people down. You say I have an opportunity that is equal or better in what you have given me. I say we have not, because we have not had the opportunity the law gives us to find errors, falsifications and fabrications of this proof. That is the Master's view, and I take my exception to it. 27104 27105

There is another matter that I wanted very briefly to talk upon. I have kind of got the cart

27106 before the horse, because you have already ruled on it, but if I am not mistaken in my recollection of Mr. Woods' evidence as to the processes of making this gas, he admitted on cross-examination, to put it very briefly, practically this state of affairs—that with the cost of water gas increased during a given period very much more rapidly than the cost of manufacturing coal gas was mounting, they steadily increased the proportion of output of water gas and steadily decreased the proportion of the manufacture of coal gas, especially in their new plant at Astoria,
27107 which could have been diverted in either direction, either toward the economical coal method or the expensive oil method.

The Master: Yes, but I think you said—

Mr. Hayward: Just let me finish, if the Master please. Am I not also right in my remembrance that his testimony was they were using their coal plants as a breakdown service, as a reserve in cases of these great emergencies that might arise, and that when pinned down on that he testified it took three weeks to get a coal gas plant going and twenty-four hours to get a water gas plant going—seemingly in spite of the sneers of our
27108 worthy opponents to think that I should know anything about making gas, and that they know it all, facts are facts, and they are stubborn things. It seems to me that this record clearly shows that they have used the more expensive method for their regular output and the cheaper method for their reserve and breakdown output, notwithstanding the fact that the one they have held in reserve takes three weeks to get going and the other one takes twenty-four hours, which would seem to be a perfectly ridiculous reversal of ordinary scientific methods of economically manufacturing and selling gas in this city.

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If your Honor will remember, the only possible excuse that was made for that was the difficulty in selling coke, and Mr. Woods admitted on the witness stand that in more than one year, certainly in the year in question and, as he remembered, in every other year, every year we had under discussion, three or four, they had bought coke and had paid more for it than he had given the consumers credit for in his estimated cost of manufacture of coal gas. Isn't that true?

The Master: Yes, I remember that.

Mr. Hayward: There were all those points. So I really made my motion here in perfect good 27110
faith, expecting to be heard on it and expecting the Master to give consideration to this question that they have not manufactured gas in the most economical and scientific method.

The Master: But I have. Where you make your mistake is that I have not had it in mind. The minute you brought out that testimony my mind was working. That very minute I was taking it under consideration, and the way my mind was working was this: A good deal of question in the light of the testimony as to whether it ought to be water gas or coal gas, that they made more expensively, but they could not make 27111
the coal gas according to their testimony for what the state says they must sell. That is my point.

Mr. Hayward: There is no testimony that they tried to make it—in the quantities, and with the modern machinery that they had available.

The Master: Yes, with the figures given to me, assuming everything that might be said in support of the proposition that they could dispose of their coke advantageously, I reached the conclusion that they could not make coal gas with a profit at the price at which they were compelled

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to sell it. That is the reason I eliminated that. Do not get the idea that I disregarded these things.

Mr. Hayward: The proof of the pudding is in the eating.

The Master: I have reached the conclusion on such facts, that it takes so much coal, it takes so much labor, that they get so much residuals, figured out according to the statement of the testimony now in, and that is the way my mind operated there.

Mr. O'Brien: But they did not bring in the
27113 books of Astoria to prove that; that was not in the testimony.

The Master: I am not going to argue it out. All I wanted to satisfy Col. Hayward of was the fact that I have not thrown things aside without consideration; I have been thinking of them. I am not prepared to say now what my ultimate conclusion will be as to whether they have made gas most economically. A week or two ago you may remember, or perhaps you were engaged elsewhere at that particular time—for weeks my mind has been running on the reason why they did not make more gas in Astoria, why they did not
27114 work to capacity, and it seemed to me that if they worked to capacity the cost of production would be less, and I told Judge Ransom that I should want him to recall Mr. Woods, that I wanted to ask him some questions about it. But after he was recalled as I remember I asked him the same things I did before. In other words, my mind was revolving about that same point. My mind keeps working; perhaps not accurately, but I have thought of all these things, and that is what I want to satisfy you about.

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Mr. Hayward: As to the matter of holding as you do, whether it goes up to the upper court on the record of the complainant or not, I think the Master should take into consideration the fact that it is not fair to pass it up to the other court, that if we get our testimony in, and the burden having shifted, as your inclination is at the moment, why then of course I presume the next move on the part of this company will be to ask for a temporary injunction of some sort to permit them to charge a higher rate and collect another little honey-coated pot in their treasury, never to go back to the consumers, just as happened in the previous case, which as I remember was four or five hundred thousand dollars, and which I think should be taken into consideration at this time by the Master to such an extent that you make them prove what the law requires them to prove in this case beyond a reasonable doubt.

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The Master: I think I have. I have not the slightest doubt on the result as it now stands, and I repeat that over and over again, because some complaint has been made about my statements that I must assume there is $20,000 a day. Of course I must assume as the record now stands, that is the sworn proof, that that is so. I have got to take it, I have not any escape from taking it. That is the proof. On the record as it now stands, based on the sworn proof and for the time being disregarding the books altogether except as to the quantity of gas sold and what the consumers pay for it, I have reached the conclusion that it costs them more to make the gas than they are getting. I have reached that conclusion on the proof as it now stands.

27117

It may be that when the defendants come in they will be able to show me that of course the

27118 way they have been buying oil it has cost them more, of course the way they have been buying coal it has cost them more, but they could not have gotten coal at much less, or oil.

I may change my mind as to the result, but just now I am satisfied in my mind on the evidence beyond a reasonable doubt to the effect that it costs them more to make gas, whether it is coal gas or oil gas or mixed water gas and coal gas; and irrespective of invested capital, irrespective of whether they ought to have made more water gas or coal gas, that the case is proved beyond a reasonable doubt up to this point.

27119 Mr. O'Brien: Your Honor, you refer to the tabulations of candle power, and I take it you refer to certain memoranda in the manufacturing book of the 99th Street station.

The Master: Which you offered in evidence.

Mr. O'Brien: To which I called Mr. Woods' attention.

The Master: And which you offered in evidence.

Mr. O'Brien: If your Honor says so.

The Master: Don't you agree with me?

Mr. O'Brien: It does not make any difference in my point. If that is what you refer to, I

27120 would call your Honor's attention to that record and suggest that you read it between now and Monday.

The Master: Why?

Mr. O'Brien: The inquiry that I made of the witness as to the receipt of the tests of the city, as to whether or not they preserved them, whether or not they had the original notices of the tests.

The Master: I went into that; why should I read it?

Mr. O'Brien: It is the rule.

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The Master: The fact is that you over the objection of Judge Ransom offered in evidence the manufacturing book of the tests made at 99th Street station.

Mr. O'Brien: The record bears out the examination of the witness and the reference made to what they had set forth, and the witness's explanation of what was in the book, whether or not the city tests, whether or not the city's tests are made of the gas of all the companies; what is the gas that may have been tested, assuming that the inscriptions made in the manufacturing book under the title "City Tests" are all unproven elements in 27122
this case, and hence I assert that they have not shown themselves in equity with clean hands, they have not shown themselves conforming with the statutes, they have not given you even the very inkling of proof as to the quality of the gas that they make, because the 99th Street station after all, even assuming that that test that was made by the city was made solely of the 99th Street gas, is only a small portion of the gas that was made, and the inquiry of the witness only related to a few days concerning which I quizzed him when I asked him to explain the manner in which the book was made up and the records were in- 27123
scribed. This is a very important matter and I bring these things to your Honor's attention so that you may deliberate on them.

The Master: No, I have deliberated.

Adjourned to Monday, January 5, 1920, at 9:30 A. M.

Last Complainant's Exhibit 411.
Last Defendants' Exhibit AA41.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 27127

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 5, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of counsel for complainant.
MR. CHAMBERS, of counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of counsel for Public Service Commission. 27128
MR. O'BRIEN, of counsel for defendant Swann.

Mr. Hayward: If your Honor please, you will remember that you were to give me about fifteen minutes on the matter of these tests. At the noon adjournment of the last day this matter was left up in the air, and the Master was inclined, as expressed to us, to consider this matter very seriously at least. The thing that decided your Honor's mind, when we came back after lunch, was this statement from Judge Ransom made in the record. 27129

"Fortunately, perhaps, in view of the doubt which exists in your Honor's mind, although the complainant is clear that it in no way rested upon this complainant to prove its nonviolation of the candle power requirements during the toluol

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period or during any other time, the situation in this record is against consideration by your Honor whether you will report to the Court that this complaint should be dismissed. Over the complainant's objection you permitted the defendants on what you at the time termed as new matter, to go into the question of whether the company had complied with the candle power requirements during the toluol period and during a portion of the time outside the toluol period; and there were read into this record over my objection, in part by your Honor and in part by Mr. O'Brien, and

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then the whole thing received in evidence, column after column of company tests at 79th Street and at Grand Street and the Bowery, which, under the records in this case, are the points which have been prescribed by law—

"The Master: I remember it, and I did it deliberately.

"Mr. Ransom: Those are the points which have been prescribed by law and public authority as meeting the requirements of the statute.

"The Master: I remember it. I did it deliberately. I could not understand why the defendants were going into it, and I could not, for

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the life of me, understand why you were objecting to it.

"The motions to dismiss are denied. Is there anything else you want to say?"

Again, Mr. O'Brien said:

"But, your Honor, there is no proof before the Court to show that you can determine just what particular gas goes through these testing stations.

"The Master: I know that. I have in this record proof, which I brought out myself, from Mr. Woods—nobody else bringing it out, everybody fighting shy of it, apparently—the quality

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of the gas made and the fact that it would not lose more than a certain percentage, which would carry it to the testing station at least a mile away, to at least 22 candle power, at 79th Street, and at Grand Street and the Bowery, from the 99th Street, the 21st Street and the Astoria plants."

That is what we have claimed is insufficient, this man's expert opinion as to what candle power at the plant would be necessary to hold it to 22 candle power a mile from the plant.

The Master: The difficulty in my mind was not that so much as it was that there was other gas from other works, the candle power of which had not been proved. 27134

Mr. Hayward: But obviously the thing which decided your Honor—which still may be correct, I am not cocksure of this thing—in addition you say, "I have in addition proof of the actual tests made at 79th Street and at the works in t total which Judge Ransom refers, and I am clear that that record is all right."

Now, as far as Major Clark and the people up at the commission are concerned—we have all been working on this Friday—we have not bee able to dig this out. As to that statement of Judge Ransom, unless I am crazy today he was crazy the other day, because there were no column after column of tests put in that we can find or that any of us have any recollection of. It is not queer that I did not recall it the other day, because I was away at that time a good deal at the Criminal Court Building, and sick, but it was an absolutely erroneous statement that Judge Ransom made; and the Master, having in mind this table that I am going to refer to, reached the conclusion quickly that he was right in his statement. 27135

27136 I will read from page 5252 of the record:

"Q. Now, we have here the candle power tests. Would you consider them reliable?

"Mr. Ransom: Which ones? I object to the question as indefinite.

"Q. Made at the works?

"A. I would.

"Q. And at 79th Street?

"A. You mean the company's tests?

"Q. Yes.

"A. Yes, I should say so.

"Q. So that so far as we have gone here from the first column, everything is reliable information?

27137 "A. Insofar as you have indicated, yes.

"Q. And the gallons per gallon, are those usually computed by the superintendent?

"A. By the clerks.

"Q. Well, is he usually a mechanical graduate?

"A. Oh, no, it is a simple calculation.

"Q. He does other work?

"A. Oh, yes.

"Mr. O'Brien: I saw that flapper flap again, your Honor.

"Mr. Ransom: I was trying to get the witness—

"The Master: It was a perfectly proper flap.

27138 Mr. Woods had his hand up to his mouth and could not be heard, and Judge Ransom indicated to take his hand away from his mouth. A perfectly proper flap.

"Mr. O'Brien: It was just a shadow in my eye.

"The Master: Well, I saw it.

"Mr. Ransom: I don't want this trial to be entirely between Mr. O'Brien and the witness. I want to hear what the witness says.

27139

"Q. Mr. Woods, do not the holders in a given station supply all the gas in the neighborhood—pretty much all the gas in the particular neighborhood nearest to it?

"A. Well, it would supply right in the district, yes, probably.

"Q. Well, do you keep the gas in a separate holder that is made in a station?

"A. Keep gas in a separate holder?

"Q. Yes.

"A. If we have one holder, why—

"Q. Well, you have four or five holders there at 99th Street, haven't you?

27140

"A. Oh, we might fill one holder and go over and fill up another, and send it from one back and forth.

"Q. You mean you do mix in your holders at 99th Street, the gas which is made there and the gas which is transferred to it?

"A. If it were transferred into the station, it would be. But very little is transferred into the 99th Street station, however.

"Q. Very little transferred to it?

"A. Yes. It is usually transferred the other way, they will send gas uptown.

"Q. How many holders have you got there?

"A. How many?

27141

"Q. Yes.

"A. We have two holders in operation besides the relief holder.

"Q. You have one that is not working?

"A. Yes.

"Q. One you use for the storage of oil?

"A. Yes.

"The Master: I think we have had enough on that.

"Q. Now, the manufacturing averages here, showing the oil terms of gallons per thousand cubic feet, they are made up at the works office.

27142

"A. Yes.

"Q. And you would accept these as reliable?

"A. I should say so, yes.

"Q. So that 3.96 gallons for 22 candle power gas would be a reliable statement?

"The Master: Let us see that. Where do you see any 3.96 for 22 candle power?

"Mr. O'Brien: All the way down through here, your Honor.

"The Master: Not at all.

"Mr. Ransom: That does not prove what makes 22 candle power gas.

27143

"The Master: Reading down the page, the first item is 3.96 against 23.65; 3.97, 23.66; 3.98, 23.68. There is no place that I have discovered —against the city's tests.

"Mr. O'Brien: Why, yes.

"The Master: That is not the test.

"Mr. O'Brien: That is the test that covers.

"The Master: I am not going to let you do that.

"Mr. O'Brien: What?

"The Master: I am going to let you show—

"Mr. O'Brien: Well, all the more strongly does it prove the point I am driving at, that it will produce a greater candle power with .96.

27144

"Mr. Ransom: In the works?

"The Master: Certainly, six to one, it ought to be; at 4 it ought to be about 24, ordinarily.

"Mr. Ransom: 24 or 25.

"Mr. O'Brien: Your Honor, I have been testing this man's statements.

"The Master: Just question him on the right columns; don't mislead him. You know perfectly well—

"Mr. O'Brien: This is midwinter.

"The Master: As I looked at the page I could see at once, and that is what made me interrupt

27145

you before you asked a question, that it ran about six to one, about four gallons to 24 candle power; it runs sometimes higher and sometimes lower.

"Mr. O'Brien: What I am trying to find out is what this book shows as to the gallons of oil for 22 candles?

"The Master: It don't show it at all.

"Mr. O'Brien: Well, it does from the city's tests.

"The Master: Oh, no, that has been mixed with other gas.

"Mr. Ransom: This plant does not run as high in the works in order to make the candle 27146
power on the district.

"Mr. O'Brien: They have pipes for every company.

"The Master: I am not going to let you prove the city's tests that way.

"Mr. O'Brien: By what?

"The Master: By taking the figures in that book.

"Mr. O'Brien: The city's tests, if they set up for the separate companies at the city's testing stations— they have got gas that is supposed to be the gas of the Consolidated, and gas of the New Amsterdam and gas of the other allied 27147
companies.

"The Master: The point I am making is this. I am not going to let you assume that because the city notifies them that their tests show certain figures, that those figures were correct. I am not going to bind the gas company by that.

"Mr. O'Brien: I did not ask you to do that.

"The Master: Well, come on, next question.

"Mr. O'Brien: I hold to the point here, where we have that 22 candles as from the company's test at 79th Street.

27148 "The Master: Yes.

"Mr. O'Brien: And that is on the—

"The Master: What was the works test on that?

"Mr. O'Brien: The company's test—this is Friday, January 7, 1916.

"The Master: What was the works test?

"Mr. O'Brien: The works test was 23.67.

"The Master: And the test at 79th Street?

"Mr. O'Brien: The test at 79th Street was 22.08.

"The Master: Yes, and the city test on that

27149 date?

"Mr. O'Brien: 21.93.

"Mr. Ransom: Well, I object to putting in any of the city's tests in that way.

"The Master: I just wanted it because I knew it was pretty close to 22 there.

"Mr. O'Brien: And the oil is 3.96.

"The Master: That is all right, now what is your question?

"Q. The question is whether the witness would take that as a reliable statement for that particular date?

"A. Yes.

27150 "The Master: That it took 3.69 gallons of oil to make 23 plus candle power at the works, which tested a little over 22 at the 79th Street station?

"Mr. O'Brien: 22.08.

"Mr. Ransom: That assumes that the gas tested at 79th Street was merely 99th Street gas, whereas it may be other works, the 21st Street plant, for example, where they are getting higher candle power than 23.

"Mr. O'Brien: I am going to object to counsel's statement now and counsel becoming a witness.

27151

"The Master: I think the statement was proper as calling my attention to that particular fact.

"Mr. O'Brien: What is that?

"The Master: That is this: As I understand Mr. Woods, practically or substantially all the gas that is made at 99th Street probably reaches the consumers in that neighborhood. He does not think there is much gas drawn in or transferred to 99th Street.

"Mr. Ransom: Into the holder; not into the neighborhood. He has not said that.

"The Master: Into the holder. 27152

"By the Master:

"Q. Now, does that test at 79th Street come directly from the works at 99th Street, the gas come from 99th Street?

"A. It does not, your Honor.

"Q. So that the test made at 79th Street does not necessarily mean gas made at 99th Street?

"A. Of all the gas that goes into our transfer system.

"Q. Just answer that. If I go to the 79th Street testing station and make a test of gas there, will I be testing 99th Street gas?

"A. You would not, and I would not know whose 27153 gas you were testing.

"By Mr. O'Brien:

"Q. Why do you say that?

"A. Because—

"Q. On what do you base that statement?

"The Master: You asked him why he said that.

"The Witness: Because I know with the mixture—I know that in the transfer system that the average production at 99th Street represents three per cent of the gas that goes into the transfer system, and that when we try to undertake to

27154 say that we can locate that three per cent at a distance from that point, that it is not possible to do.

"The Master: Is that what you had reference to when you said you could not tell what gas it was a block away from the works?

"The Witness: That is right; there is a mixture, your Honor. We are getting all these gases that are absolutely mixed, and we do not know one gas from another.

"Q. Do you say that the send-out of 99th Street station was only three per cent of the total send-out used by the Consolidated and allied companies?

27155 "A. From three to four per cent, yes, at 99th Street—

"The Master: You have answered it.

"Q. Did you have charge of the laying of the mains from the 99th Street station to the 79th Street testing station?

"A. I did not.

"Mr. Ransom: I object to the question. He has not said there were any mains laid.

"The Master: He has answered; he said no.

"Q. How does the gas go down to the testing station; does it go down by direct main, or is it a distributing main, or what is it?

27156 "A. A distributing main.

"Q. Is it a direct main from 99th Street to 79th Street?

"A. It is not.

"Q. Isn't it supposed to be?

"A. Not any more than any other distributing main.

"Q. Hasn't the City of New York, the authorities of the City of New York, been led to believe that it is?

"Mr. Ransom: I object to the question.

"Mr. O'Brien: Just a minute now. We will get it right.

27157

"Mr. Ransom: How does he know?

"The Master: Well, do you know?

"The Witness: I do not know."

The Master: Can you tell me whether those manufacturing records were marked in evidence?

Mr. Ransom: At the time Mr. O'Brien called for these books and they were produced here, you said that after the cross-examination upon them they were in evidence. In the course of the cross-examination I brought that out, and then at the close of the cross-examination I called attention to the fact and had enumerated the books that were here, and you indicated that they were in 27158
evidence, at page 5244.

Mr. O'Brien: Just read that into the record, Judge, won't you? Let's get that a little bit precise.

Mr. Ransom: "Mr. O'Brien, I want to say right here that I am assuming that these books are offered in evidence by the complainant, so there will not be any misunderstanding about it?

"The Master: Yes.

"Mr. Ransom: Assuming what?

"Mr. O'Brien: Over my objection all these books. All these data underlying your records, underlying your accounts are in evidence over 27159
my objection?

"The Master: Yes.

"Mr. O'Brien: And with an exception to the defendants?

"The Master: In other words, you are in substance, putting in in a short way all your records and books?

"Mr. Ransom: Do I understand it to be your Honor's attitude that the underlying data are a part of the records?

"The Master: Yes."

Mr. Hayward: Well, then, you said, Judge

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Ransom, adopting the words of the Master: "In other words you are in substance putting in, in a short way, all your records and books?"

Mr. O'Brien: Read it all.

Mr. Ransom: From our index of exhibits, I find that on page 6272—

Mr. Hayward (interrupting): I could not find any city tests, your Honor. I do not think they are here, and I want to finish my argument.

The Master: I would like to know, in connection with your argument, whether these books were received in evidence.

Mr. O'Brien: They were not, your Honor.

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Mr. Ransom: They were.

Mr. O'Brien: At the time I made that statement I called your Honor's attention to the fact that I was assuming that they were to be marked in evidence, and Mr. Ransom objected to their being received.

Mr. Ransom: On the contrary, I did not.

Mr. O'Brien: And the Master made the ruling that they were, and I objected, and that is where they stand, both sides are objecting to it, the Master assuming that they are in.

Mr. Ransom: At the close of the cross-examination under your Honor's ruling, I called at-

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tention to the fact that all of these books for the entire period—

The Master (interrupting): Let us have the record.

Mr. Ransom: Well, Col. Hayward only has a part of it.

Mr. Hayward: Maybe he is right. Then he goes ahead here, if your Honor please, and talks about these postal cards, do you remember, that they got from the city?

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The Master: Don't read it, it is in the record, don't read it at all. It is perfect nonsense to read it into the record when it is in the record.

Mr. Hayward: Well, your Honor remembers it then.

Mr. O'Brien: You might make reference to it then. I suggested that, your Honor, because the stenographer was copying the other excerpt that Col. Hayward read.

The Master: Go ahead.

Mr. Hayward: Woods says they were not interested in the city's tests, and that they may have continued to get these cards from the city notifying them, and so forth. 27164

The Master: And didn't they enter in this manufacturing book the result of what the city reported?

Mr. Hayward: Oh, no.

Mr. Ransom: The books had two tests, at 79th Street and Grand Street and the Bowery, only the city tests your Honor were not let in, and the other was the company's test.

The Master: That is my recollection of it.

Mr. Hayward: No.

Mr. Ransom: That is the fact.

Mr. Hayward: Well, if you will sit down, Judge, and just get something definitely in this record to refute any statement I make here, we will get somewhere, but just to talk here and say this, that or the other, and make assertions without anything to back them up, won't get us anywhere, but I am going to stick to what I said the other day, on which the Master overruled my motion. 27165

The Master: He did not say the city's tests.

Mr. Ransom: He said the tests at the city testing station.

27166 The Master: The city's test?

Mr. Ransom: You just read it.

Mr. Hayward: I have not read it. One day is the only test shown here.

Mr. Ransom: You referred to the company's test, the works' test and the city's test, at page 5256.

Mr. Hayward: Read it. It don't prove anything, Friday, January 7, 1916.

The Master: What did he say about that one day?

Mr. Hayward: Well, it begins, "The Master: Well, come on, next question.

27167 "Mr. O'Brien: I hold to the point here, where we have that 22 candles as from the company's test at 79th Street.

"The Master: Yes.

"Mr. O'Brien: And that is on the—

"The Master: What was the works' test on that?

"Mr. O'Brien: The company's test—this is Friday, January 7, 1916.

"The Master: What was the works' test?

"Mr. O'Brien: The works' test was 23.67.

"The Master: And the test at 79th Street?

27168 "Mr. O'Brien: The test at 79th Street was 22.08."

The Master: Let me ask you in this connection—

Mr. Hayward (interrupting): The Master says, "Yes, and the city test on that date?

"Mr. O'Brien: 21.93."

The Master: If Judge Ransom will only sit down. It is your contention, Mr. Hayward, that they have got to bring in here proof that on every single day—

Mr. Hayward: No, not at all.

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The Master: How much proof have they got to offer in that respect?

Mr. Hayward: I think they have got to offer proof showing a reasonable, ordinary compliance with the law. I do not mean that a fall down on any particular day, or on any particular two or three days, would throw them out of court here at all, but I do contend that they must show not one day over a period of a year that they were up to the test, but what any ordinary man would say was fair proof that day in and day out they fairly and ordinarily kept their gas up to this standard. Don't you think that would be a fair 27170
rule?

The Master: Let me ask you, though: they produced here, at the request of counsel for one of the defendants, if not for others, the manufacturing records which had in columns the works tests, the amount of oil used, the company's test at 79th Street and the City's reported test for a period of years. They are in court.

Mr. Hayward: No, I do not follow you on that.

The Master: But the books were in court, the books were.

Mr. Hayward: I say that there is only one rec- 27171
ord of any test than that—one record of any test—

The Master (interrupting): Follow me a minute. You say they should have proved it for more than one day. I say how many days. Well, you very properly say, "I am not prepared to say that, but a reasonable amount to satisfy a reasonable man as to what they did," assuming always the burden is on them to prove it. Well, they bring in these records upon the demand of counsel for the defendants, their witnesses are cross-

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examined with reference to those records, and the defendant, counsel for the defendant, picks out his own day, they do not pick out that day, he picks out his own day, and spreads in the record that on this particular day, fairly representative, I think I have a right to assume, of other days, because if there were other days that did not indicate the same condition he would have pointed it out, the works' test was twenty-three something, and the company's station test was twenty-two something, and the City's test on the same day was something under 22, whatever it was. If you are

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right, they would have to prove up every day, every day.

Mr. Hayward: No. In the first place—

The Master (interrupting): I do not see that there is anything short of every day.

Mr. Hayward: In the first place, the Master brought it out; which I do not think makes a bit of difference.

The Master: No.

Mr. Hayward: It is for a certain date of the year, which might have been a warm day, it was a winter day, but it may have been, as your Honor knows, a warm day, or it might have been

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a cold day, and you have got nothing to show any compliance with the law here, picking out one isolated separate day, with no facts as to the conditions surrounding that particular day when the witness has told you that it was perfectly easy to get this 22 candle power through the mains except in certain hot seasons of the year, but certain temperatures of the days of the year, of which you have no record at all.

The Master: I did not pick out that day. Mr. O'Brien was cross-examining about that day.

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Mr. Hayward: Well, now, I am going to finish on this thing. This record, if I do not read it, I would like to have the Master verify what I say, that that is the only place where there is a single record of a test made either by the company or the City in this record at the point the law requires the test to be made. Now, what I think your Honor had in mind when you overruled us so quickly here when Judge Ransom spoke about all these columns after columns with the City's test made at the testing station, which was absolutely false and no such thing as that, and if it is not false you show me and I will apol- 27176
ogize, Judge, for saying that it is false—"In view of the witness's statement, I will not take any tests on the district as applicable to any particular works. It must have reference to the works test."

The Master: That is right.

Mr. Hayward: So likewise the converse of that would obviously be true, although I did not read that the other day, that the test in which gas of other companies was mixed up with this company's gas is no test. Now, here is the table that you undoubtedly had in mind: "Q. Would you deem these figures reliable which I read, of the 27177
quantities of oil used in January, 1916, at the 99th Street station?" You brought this out again. "The Master: Wait a minute; I will not let you read those figures unless you read the works' figures in comparison with them. The works' test, January 1st, was 23.65, and the oil was 3.96. Now, go ahead and read what you like. Q. This is in the sequence of the calendar days of that month, January, 1916, beginning with the 1st." Then he reads the candle power and oil, obviously from the Manufacturing Book of the complainant.

27178 Mr. O'Brien: That is the works' test, not the City's test.

Mr. Hayward: At the plant, not at the testing stations, at all, but it is at the plant and made by the company. "Then there is an average, this is in red ink, and that is likely the average for the week, is it?

"A. Probably.

"Q. That is 23.67 and 3.96," and so it ran through the average, which was offered in here.

"Q. Now, what drop in candle power ordinarily would take place owing to the difference in tempera-
27179 ture between 99th Street station and a City testing station?

"A. It would depend upon the time of the year and the ramifications of the lines." So I say you cannot take any one day and prove anything.

"Q. Give us the maximum?

"A. I know that taking the lower section of the City we have greater difficulty to maintain candle power than we do in the upper end." That is what you referred to, I think, in Woods' testimony, the other day, when you said 23 at the manufacturing station would produce 22 a mile away on the line; you say.

27180 "Q. Well, take in the lower end of the city, would you have to produce a 23.95 candle power to produce 22 candle power at the city testing station?

"A. At times at 21st Street we run 25 to 26 candles.

"The Master: Why is that?

"The Witness: Because we get a drop on the district, the ramifications through the lines, etc., and in order to get the candle power at our testing station, there are times that we have to carry that candle power."

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So it shows from three to four candle power over 22, if your Honor please—this is the company's witness—as being necessary to comply with the City's requirements and the requirements of the law. It shows that they have to make 26 candle power to get 22 at a mile from the station, which I insist, instead of your one day, January 7th showing a compliance, out of the mouths of their own witness, it shows a practical non-compliance.

Now, there is another point that we might as well meet here and now about this thing. So insistent has Mr. Ransom been about this toluol 27182
thing, if your Honor please, that there was no duty or obligation on the part of the company during this toluol period, that I confessed a temporary weakness in the thing. He said it so many times here, and the Master seemed to agree with him without any stopping to think it out, that I confessed for one I was puzzled about it and was pretty near ready to accept his say so that of course during the toluol period we did not do it and we did not have to do it.

The Master: Do not include me in the statement that none of us stopped to think about it. I did, and I will tell you what I thought about it. 27183

Mr. Hayward: All right.

The Master: The first impression I had in mind was that that could not be so, because you could increase perhaps the amount of oil that you used, and get a greater candle power and still produce the amount required, the candle power required, upon the district. Is that your point? But you will find that when I asked Mr. Woods why that could not be done, he said it would not carry more than a certain amount of oil, that the gas would then become smoky and of no use,

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and so I did think about it, so do not include me in your statement that nobody thought about it.

Mr. Hayward: It is perfectly clear on the record that they were getting less than 22 candle power, because this is the Master's statement: "It is perfectly clear on the record that they were getting probably less than 22 candle power gas. I have ruled, and will rule again, so that there cannot be any question, that I will not take any proof on that. If during that period they delivered less than 22 candle power gas to the consumers, during the time the Government was extracting the light oil for war purposes, it will not be held by me, at any rate, to be a violation of the statute. Therefore, I will not take any further proof."

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And further, on page 5378:

"The Master: My ruling is this: This company, according to the proof thus far submitted, establishes the proposition that it made a 22 candle power gas. In other words, in its works it got a gas of a sufficient candle power to test 22 candle power at a station a mile away."

Now, that gets back to Mr. Woods' statement again, which I claim is absolutely erroneous because he does say they have to make it of 26 candle power to get 22 candle power out on the line.

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The Master: I am with you in the argument that the test at the works does not necessarily prove anything, but I do not follow you to the point of saying that there is not any proof on which I could find that the gas furnished in the transfer system was not 22 candle power at the testing station. There is some proof of it, and I so rule.

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Mr. Hayward: What, on that one day?

The Master: On that statement of Mr. Woods which you read a minute ago, in which he said, "We have to make 26 candle power at the 21st Street Station in order to get 22 at the testing station"—from which I infer that they did have 22 at the testing station. There is enough for me to stand on.

Mr. Hayward: Then you say:

"My ruling is this: That when the government came along and stripped that gas, taking out the light oil, there was no burden or obligation on the part of the Gas Company to come back and make 27188
up the deficiency, if there was any, whether the gas was as good or not as good. They did all they were required to do."

Judge Ransom testifies: "The government fixed the candle power to the consumers."

The Master: That statement ought to be modified to the extent I have already indicated, that there was testimony to the effect that it would not carry any more oil. They could not have done it.

Mr. Hayward: There is no testimony that they could not make coal gas that would come up to 22 candle power during the toluol period.

The Master: Yes, at a certain point Mr. Ad- 27189
dicks, I think, testified that it should be 16 candle power to be efficient, and beyond that it became poor. Mr. Addicks' testimony was if they could make 16 candle power gas they would be very glad to make coal gas. That is my recollection of it, and I am giving you my recollection now out of nine thousand pages of testimony.

Mr. Hayward: Then I will bring the record to you, to show you that Mr. Woods testified to the contrary, if there is any question about that—and please defer judgment on this thing until I

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get to the record of Mr. Woods, where he said they could make it.

The Master: Now off the record.

Mr. Hayward: Well, why off the record?

The Master: All right, go ahead. Am I not right about this, Colonel—that I cannot dismiss this complaint if there is any evidence at all?

Mr. Hayward: Why, yes; I do not think you can hold this case here in the face of a motion that the rule of law, that requires them to prove their case here beyond all reasonable doubt, is pretty near as strong a rule as there is in a criminal case, and you say you will overrule this motion if there is any testimony at all.

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The Master: I am asking you.

Mr. Hayward: No, I do not think so.

The Master: Am I not bound to deny this motion if there is evidence proving this point?

Mr. Hayward: Well, I would say this: If there is evidence in the case to prove their case, and every material feature of it, beyond all reasonable doubt, in the event that when we put our evidence in we did not rebut it in any way or offered no evidence on it; if there is enough evidence in this record now so that you feel like deciding this point of the case as proved beyond all reasonable doubt in your mind, and then if we did not offer any evidence, you would decide the case on it, then I say now you should overrule our motion. But not certainly if there is any proof; in other words, it must be up to the degree that if left unchallenged would let you decide the case under the rule of proof laid down. Do you not think that is the law?

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The Master: I imagine there must be some proof, some satisfactory proof. It would not have to be as strong proof as you would need to meet contrary evidence.

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Mr. Hayward: No, but a shadow of testimony, or the raising of a trifling presumption here would not hold them in court at all.

The Master: You want to read something else there?

Mr. Hayward: Well, here is a line of cases. I do not know whether your Honor is familiar with them or not. Of course, they are very new, because the question has only come up practically since the end of the war. It states the law here. "Impossibility of performance of contract. The general rule of law is that where a party by his own contract creates a duty—" Well, before I 27194
read this, where is the contract?

The Master: Colonel, do not read that. I am just briefing it up, and I have to try a case next week involving that same proposition. I have all of those cases.

Mr. Hayward: I want to put on the record before the Master this proposition, that all this talk we have heard about the Government coming along here and stripping this company of the valuable elements of their gas, the ruthless hand of Uncle Sam, is made out of whole cloth. As a matter of fact the government of the United States never commandeered this gas company. 27195
They came over here and the gas company made a voluntary contract with the government just the same as a clothing manufacturer might have, or a pipe manufacturer, or anybody else—made a voluntary contract with the government in which the government provided clearly a remedy for this company, to make up any deficiency whatever in the gas which might result from the part of the product the government took away. Have you read this contract; are you familiar with it?

The Master: Why, I glanced at it when it was offered in evidence.

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Mr. Hayward: Well, there are two or three paragraphs in here that I would like to have you consider.

Mr. Chambers: Colonel, pardon me. State the exhibit number, will you, for the record?

Mr. Hayward: It is Complainant's Exhibit 341. The contract goes on, as I say, a voluntary contract to provide for the erection by the government on the company's property of this toluol extraction plant, which are called in the contract "Additional facilities." Every precaution is taken by the Government to protect this company in

27197 their original and primary duty to the consumers of gas of New York City. Repeatedly throughout the contract—I will not take time to read it unless you want to hear it—it provides that any additional material that the company must buy—it does not say oil or coal or anything else—the Government stands ready and willing to recompense the company for, it stands ready and willing, and does bind itself by this contract, to reimburse this company for any damage it may be put to, any fine or penalty it may have to pay for any loss in its franchise rights, or respecting the statute of the State of New York, or any contract

27198 it may enter into upon it. It is as good a bond as you could draw to protect a client of your own, and it is a voluntary contract.

But the Government, your Honor, goes a step farther, realizing no doubt that the light of this great city was important in the conduct of the war, just as much as that toluol that never got to us was on the other side, and here is a clause that I contend, if you have not seen it already, changes the entire status of this thing, and which the Government put in here: "And provided, further, that no order or direction of the contracting offi-

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cer"—that is the army or the Government was called a contracting officer, the company was called the contractor—"that no order or direction of the contracting officer shall be deemed to require or authorize the contractor to interrupt the manufacture or supply of gas."

Now, what kind of gas? Wind? Certainly not. The supply and manufacture of gas, the kind of gas they were making, or were supposed to have been making for years, the kind of gas the law required them to make. Gas is gas and it had no qualifying phrase in there. I think any fair man would say the Government directed the company in this contract not to let the extraction of this toluol interfere with the manufacture of gas of the standard power that the law required. I think that is the only inference that can be drawn: and after all these provisions to reimburse the company for all these materials, whether it was coal or oil, or whatever they had to buy, the Government protects the people of the City with this clause: "That no order or direction of the contracting officer shall be deemed to require or authorize the contractor to interrupt the manufacture or supply of gas."

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It does not say gas of 22 candle power, but it means that if that was the gas the company was furnishing—

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The Master: I should not say so.

Mr. Ransom: The proof is they fixed the candle power.

The Master: Judge Ransom, let me talk; I insist on talking here myself. It would be perfectly easy for the Government to say, "Of the required statutory standard." It would be perfectly easy for them to have said, "This shall not be deemed to permit less than the required gas,

27202 of the statutory standard." They did not do it, and in my ruling in reading an inference of that kind, where it was perfectly easy to have said something, so far as I am concerned I will never construe it to mean what it might have said in precise language.

Mr. Ransom: I will clear that up. The undisputed proof in this case is that the Government from time to time gave written orders which fixed the candle power at the outlet of the holder. Thereby the Government did two things. It did not let the company have oil, it took the oil away

27203 that might have been used for re-enrichment, and in the second place it fixed from day to day the candle power that was to be furnished.

The Master: You should not have interrupted Col. Hayward until he got through. You are getting into the O'Brien habit.

Mr. O'Brien: I except to the comment of the Court on the record.

The Master: The exception is noted.

Mr. O'Brien: I hope I may except, your Honor, without arousing your indignation.

The Master: Certainly. Anything else, Colonel?

27204 Mr. Hayward: Yes.

Mr. O'Brien: When the Colonel gets through I am going to say something else.

The Master: I will not hear anything more.

Mr. O'Brien: You can make your ruling then, your Honor.

The Master: I am ruling now, and that ruling stands. I am not going to hear any more from any other counsel. Proceed, Colonel.

Mr. Hayward: Here is a case:

"The general rule of law is that where a party by his own contract creates a duty, obligation or charge upon himself, he is bound to perform,

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legal excuse requiring that performance be made impossible by the act of God, by the law or by the other party. A striking recent illustration of this doctrine was the decision of Mr. Justice Kelby in Mawhinney v. Millbrook Woolen Mills (105 Misc. 99, 172 N. Y. Supp. 461, affirmed in June, 1919, by the Appellate Division of the Supreme Court, Second Department, without opinion).

"The interesting decision of Mr. Justice Aspinall in the case of Town of North Hempstead v. Public Service Corporation of Long Island—" well, I want to read that later. That is a case that has a direct bearing on one proposition of Judge Ransom here.

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Reading from the New York Law Journal, issue of July 24, 1919:

" 'The contract made between the plaintiff and the defendant contained certain terms and conditions for the non-performance of which this action has been instituted, and, as an excuse for such non-performance, the defendant interposed as one of its defenses the impossibility of performance, as specified and contained in its third separate defense, which in my judgment cannot possibly defeat the plaintiff's claim, for the following reasons:

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" 'The provisions of a franchise are to be considered as any other contractual provisions in a contract between individuals. The leading case upon this proposition, and the one most often quoted is Paradine v. Jane (Alleyn, 26), quoted in The Harriman (76 U. S. 9 Wall. 161, 172, 19 Law Ed. 629). The rule is well stated in a New York case as follows:

" 'If a party enter into an absolute contract without any qualification or exception and receives from the party with whom he contracts the

27208 consideration of such engagement, he must abide by the contract and either do the act or pay damage.' (Beebe vs. Johnson, 19 Wend. 500, 32 Am. Dec. 518.)"

"'And it has also been held in the United States courts as follows:

"'It is a well settled rule of law that if a party by his contract charges himself with an obligation possible to be performed he must make it good, unless its performance is rendered impossible by the act of God, the law, or the other party. Unforeseen difficulties, however great, will not excuse him.'" etc.

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To that effect in all these cases that grew out of the war, where the Government came along and made a contract with a woolen manufacurer for overcoats or uniforms, and he threw down his prior customer who had a contract with him.

If you are interested in it I can show you that the Court said that the threat by the Government that they are going to commandeer that man's uniform plant and acting under that threat, he makes a contract with them, does not excuse him unless it makes the condition impossible.

27210 The Master: Let me tell you, Colonel, while you were fighting on the other side I was waiting to be called when the time came here. I had all these problems coming up. The trouble with all these cases when you read them as they are reported is that they do not indicate the precise proof that came into the record. The clothing manufacturers, the cloth makers and the other supply dealers were using their contracts that they were begging the Government to give them as an excuse for violating the contracts they had already made. That was the trouble, and you will find that the judges who decided these cases

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were keen to hold these men to their contracts where they were satisfied they were not commandeered into the Government work, but were delighted to get it, and paid big commissions to get it. That was the secret of it, and when you read these cases you want to bear in mind what actually happened and what is disclosed by the record. That is the point.

Mr. Hayward: Of course, I had no idea that the learned judges of this State and the United States in writing an opinion would have a joker of that kind up their sleeves, if it exists. The law is very clear, and I can give you all the authori- 27212
ties you want, but you say you are familiar with them. The law is that where the Government came along and said, "Now, you might as well do this willingly and cheerfully, because if you do not we are going to take your plant," and this man made a contract with them voluntarily, the Court said it did not create such impossibility of performance of a prior contract as would be an excuse. Now, that is the law.

The Master: How would that apply in this case, in any event? The gas company had no contract with anybody to deliver 22 candle power gas?

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Mr. Chambers: It was statutory.

The Master: That was not a contract.

Mr. Hayward: They had a greater duty.

The Master: That is a different proposition.

Mr. Hayward: And the same rule would apply.

The Master: Not to the same extent.

Mr. Hayward: To their seeking release in equity.

The Master: Not to the same extent.

Mr. Hayward: More.

The Master: No.

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Mr. Hayward: A thousand times more.

The Master: No.

Mr. Hayward: Judge Ransom's proposition that they could not get oil—he will probably say they could not get the coal. Here is a case probably on all fours with this.

The Master: I know that, too, because I have had a coal case where I reached the conclusion that just because he could not get the fuel was not an excuse, it was up to the contracting party to provide himself with fuel.

Mr. Hayward: But this happens to be a case
27215 that your Honor has not in mind.

The Master: Let us hear that.

Mr. Hayward: It is a case of the Town of North Hempstead v. Public Service Corporation of Long Island, reported in 176 N. Y. Supp. 621, Advance Sheets of July 7, 1919. This is the same proposition.

"In this case the Public Service Corporation had been given a franchise to maintain and operate its gas mains and pipes along and through certain highways of the town. It failed to perform the conditions of its franchise because of conditions brought about by the official action of
27216 the War Industries Board created by Act of Congress of August 29, 1916, directing iron and steel primarily to war purposes, with the result that the Public Service Corporation could not lay additional pipes, as it was required to do. Mr. Justice Aspinall, sitting at Special Term of the Supreme Court, Nassau County, held that the failure was not excused, because there was no impossibility in a legal sense, and that increased difficulty and expense of performance, occasioned by a law enacted after the execution of a contract, does not excuse performance thereof."

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The Master: I do not follow Judge Aspinall in that. They may have affirmed it for other reasons, but I will not follow that statement of Judge Aspinall.

Mr. Hayward: I claim the law in this case is on all fours with the candle power here. There is this difference, that this poor little company down on Long Island somewhere was up against a contract the same as our subway contractors, in which they did not dream of a war condition coming up, and still they were held to a compliance with that, if your Honor please, because they showed no legal impossibility to comply. But 27218
with this gas company, this contract was not made until after the war started, until after these conditions were not only foreseen by them but were foreseen by the Government in which case the Government fully protected them in every way by offering to pay cheerfully and willingly for all the additional material, no matter how high it might come, and also forbidding them to interfere with the supply of gas to this town, in order to comply with the voluntary contract that the gas company had made.

If the gas case is not stronger than this North Hempstead case I might just as well go back into 27219
the French Army, because I am no good to practice law ever.

The Master: Let me ask you this: A Government official brings up a man or calls on a man who owns some boats and says: "Give us a figure on those boats, we have to buy those boats." The man says $150,000. The Government official goes through some red tape and then says, "You will have to let us have those boats at $100,000, or we shall take them and have the War Board fix the value." The man who owns the boats

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says, "Well, I don't want to be held up forever, if you say that is what I have to take for them well and good," and he takes his $100,000. Is that the voluntary sale of those boats, would you say?

Mr. Hayward: Well, I say the courts of this State and of the United States say that if the contractor made his contract short of the Government actually commandeering them, that fact is no defense to him of any kind or character whatever. It is just as if the Government never made any suggestion that they were going to take them. That is what all the cases hold both in this

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State and the United States, and they go so far as to say in language that the threat on the part of the Government does not excuse performance.

The Master: A mere threat?

Mr. Hayward: A threat. If this gas company had said to the Government—

The Master: But a contract made under duress.

Mr. Hayward: Let me finish. It was not made under duress.

Mr. Ransom: The contract shows it, your

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Honor.

Mr. Hayward: It was not. It says, "We have no duty to perform, we have no right to give to the Government or anybody else the light of the people of the City of New York." If the people of the City of New York want to be patriots, let them be. If they want to be patriots well and good; we do not assume we have any right to do all the patriotic work for the citizens of this town. If they had said that and said, "We are in a perfectly helpless condition, if you want to take our gas plant over, come and take it," and the Govern-

27223

ment had come and taken it, it would have been another matter. I concede it would have been. But that is not the case. Now, you may have cases and know all about this thing.

The Master: No, I do not know all about it by a long shot.

Mr. Hayward: I have to go to the courts of this State and the courts of the United States to get my law. I have done that and the cases are uniform. There is not a decision in this State or the United States that does not hold what I have said. I have a right to assume that is the law, and then this masterly wave of the hand about 27224
the toluol period is nothing. It is no different from any other period. So far as the duty of this company to furnish the standard candlepower required by law is concerned, it is no different, and they have no standing at all in a court of equity.

The Master: I am going to leave that for some higher court to decide. I am not going to throw this gas company out of court, or confiscate or hold that the property can be confiscated as the record now stands.

Mr. Hayward: They did not take their plant; they erected an auxiliary plant at their gas sta- 27225
tion.

The Master: Yes, but took the gas that was being made.

Mr. Hayward: Giving them the right to make up the defect.

The Master: Am I not right that they could not under those conditions make the required gas?

Mr. Hayward: No, you are not; you are absolutely wrong.

Mr. Ransom: They actually fixed the candlepower that went out on the district.

27226

Mr. Hayward: You are absolutely wrong. They said they could send out 30 candle power, they could enrich it up to 30 candle power.

Mr. Ransom: The Government would not let them; the Government fixed certain figures.

Mr. Hayward: There is not one of these cases that does not hold exactly as I have stated.

The Master: I am not going to throw this case out.

Mr. Ransom: I should be glad to argue this matter if you think it is helpful.

The Master: Has Col. Hayward presented all he wants to say?

27227

Mr Hayward: Unless your Honor wants to hear these cases—

The Master: No.

Mr. O'Brien: Your Honor, there is just one point I would like to—

The Master: No.

Mr. O'Brien: What do you mean by "No"?

The Master: I won't hear any argument by other counsel for the defendants on this motion to dismiss.

Mr. O'Brien: I want to call attention to some—

27228

The Master: I don't want you to.

Mr. O'Brien: I want to take an exception.

The Master: Take your exception.

Mr. O'Brien: I take an exception to your Honor's ruling made today, first that if there is some proof in the record you must not throw the case out, but must go ahead.

The Master: I will not hear any argument. Your exception is noted.

Mr. O'Brien: The second one is, I except to your Honor's ruling that because the company entered into a contract with the United States

27229

Government to furnish something that was to be used in the defense work of our country, that they were not compelled to live up to the standard prescribed by the act.

The Master: Exception noted.

Mr. O'Brien: Thirdly, I except to your Honor's interpretation of and paraphrasing of the record in this case, as to what proofs are in there concerning the amount of oil that might be carried out in the gas.

The Master: Exception noted.

Mr. O'Brien: I take a further exception to the fact that you will not permit any argument 27230
upon the motion to dismiss, or upon the points that were brought out in reference to the City tests.

The Master: No further argument.

Mr. O'Brien: There are several things in connection with the record that I want to call your Honor's attention to.

The Master: I won't hear it.

Mr. O'Brien: All right, I note an exception, one more exception in the record.

Mr. Hayward: I confess that when the Master tells me that he is not going to follow the courts of the State or of the United States, if 27231
they can't convince you there is small hope of my trying to if I stood up here—

The Master: I didn't say that. I said I would not follow Judge Aspinall's statement.

Mr. Hayward: I have offered to read from the decisions of the United States Courts and other courts to the same effect.

The Master: I shall have to rule that a mere threat is not going to excuse performance. I won't hear any argument, further argument. My decision will stand, the motion to dismiss is denied.

27233

Mr. O'Brien: At this time I renew my request that the witnesses I enumerated on Friday be called to the stand that we may be given a chance to examine them.

The Master: Do you have any particular point in mind? Let me know what it is that you want to ask of any particular witness.

Mr. O'Brien: The points I want to bring out I enumerated on Friday.

The Master: Nothing beyond what you enumerated on Friday?

Mr. O'Brien: No, further than that—

27234

The Master: What particular witness have you in mind now?

Mr. O'Brien: I have in mind the superintendents of the 21st and 99th Street stations—

The Master: I won't hear any more.

Mr. O'Brien: The superintendents of—

The Master: I won't hear any more. You are repeating what you told me on Friday. Your application is denied.

Mr. O'Brien: Exception.

The Master: Have you any proof to offer?

Mr. Chambers: May I make a statement?

The Master: What on, the motion to dismiss?

27232

Mr. Chambers: No. You said the other day, if I understood you correctly, that the complainant had proved that it costs them more to make and distribute gas than they are receiving.

The Master: Yes.

Mr. Chambers: Now, I just want to say that I think your Honor is mistaken. If I remember the testimony correctly, and if I have correctly re-examined the exhibits, there is no such testimony in the case, that it costs them more to make gas than they receive, or that it costs more

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to make and distribute gas than they receive. I understand you do not care to hear argument?

The Master: No.

Mr. Chambers: I just point out that there is no such proof in the record.

The Master: I know what I have in mind. Have you any proof to offer?

Mr. Chambers: Before we begin the offering of our testimony I would like to read into the record a letter bearing date December 27, 1919, which was sent to Mr. Ransom, about some information:

27236

"December 27, 1919.

William L. Ransom, Esq.,
120 Broadway,
New York City.

Dear Sir:

Pursuant to the arrangement made at a recent hearing, I beg to say that we desire the block and lot number or in lieu thereof the exact location of each piece of property against which the following special assessments were levied and the amount of such assessment:

27237

Item	Date of Voucher Record	Amount
	18th St. Station:	
7	10-27-1886	$ 441.75
8	11-6-1890	2,163.93
9	6-30-1891	821.82
10	5-13-1892	33.66
11	2-4-1892	1,025.88
12	12-4-1891	6,818.33
13	2-4-1892	8,917.53
14	2-4-1892	153.33
15	5-24-1894	585.65
16	9-13-1894	3,266.22

27238			
		21st St. Station:	
	17	8-25-1892	5,347.61
	18	7-20-1894	401.35
		65th St. Station:	
	19	10-4-1886	12,060.63
	20	12-20-1888	3,592.97
	21	12-20-1888	1,646.97
	22	2-28-1890	2,145.81
	23	2-28-1890	2,262.05
	24	5-31-1889	1,457.29
	25	7-12-1889	183.65
27239	26	7-12-1889	35.24
	27	10-25-1889	99.00
	28	10-25-1889	177.42
		99th St. Station:	
	29	2-17-1888	2,944.22
	30	1-28-1893	5,987.32
	31	1-28-1893	5,927.73
		General Office:	
	32	7-20-1894	67.00
		14th St. Station:	
27240	1	3-31-1890	7.39
	2	9-2-1892	293.75
	3	9-2-1892	221.43
	4	12-4-1891	1,412.58
	5	12-4-1891	4,149.93
	6	7-20-1894	465.16

Please give in each case where the above amounts include interest, the amount of such interest.

Will you please advise me approximately when we may expect this information?

Very truly yours,

MRM/S."

27241

Mr. Ransom: May I just say a word on the record regarding that? The statement made by Mr. Maltbie and Mr. Chambers, on December 23d, that the company has been engaged in the tabulation of special assessments against real property since 1884 and their segregation as to block and lot numbers on the tax maps, is without any basis of fact whatever. No such tabulation and segregation has been undertaken.

The various special assessments against property at the respective stations, offices, branches, yards, etc., are shown by the company's ledgers, bill books, etc., and for the expenditures in years 27242
subsequent to 1893 or thereabouts, the vouchers are still in existence. The bill books, ledger entries and existing vouchers were long ago furnished to the accountants of the defendants, and it is literally true that all of the records and information which the company has, in relation special assessments, has been available to the defendants and they have had full acce thereto.

With respect to certain special assessments in the years prior to 1894, for which the voucher: are no longer in existence, it is true that in a few instances the bill book entries do not identify the 27243
expenditures with the book and lot numbers of particular pieces of property. In every instance the bill book record does identify the expenditures for special assessments with the property of the company at a particular station or office: for example, the 14th Street station, the 99th Street station, etc.

In the earlier years, before the present tax map system of block and lot numbers was introduced by the City of New York, the bill book record, in most instances, identified the special as-

27244

sessment with the City's assessment numbers. For all of the purposes of the company's records, the identification of the vouchered expenditures with the real estate at a particular station, branch or office, was and is sufficient, so far as concerns special assessments levied in the years prior to 1894.

If it is desired by anyone to identify now, any or all of these early special assessments with block and lot numbers on existing tax maps, the only way known to us in which this could be done, either by the accountants of the defendants
27245 or by the representatives of the company, would be to take the assessment numbers or other information furnished by the company's bill books, and then go to the special assessment records in the Tax Department of the City of New York. In these earlier years, before the block and lot number system came in, the property affected by particular special assessment was numbered serially and, in most instances, the serial assessment number appears in the company's bill books in connection with vouchered items of expenditures. It is probable that through these serial numbers of property affected, the Tax Department could identify such property with the
27246 Department's block and lot numbers as at first put in force or as since modified.

There can be no possible reason for calling upon this company now to examine records of special assessments levied by the City of New York thirty-five years ago, which records are under the authority of the defendants in this case, and not in any way under the control of the complainant. Furthermore, it is an imposition to suggest that this company should do this considerable quantity of work in order to bring

together information which would be altogether useless for any purpose of this company or for any purpose of this case.

Furthermore, the period covered by this letter is not a period covered by any proof in this case, prior to 1894.

The Master: The two speeches are in the record. Next matter.

HENRY UNTERWEISER, called as a witness in behalf 27248
of the defendants being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. You are employed where?

A. In the office of the Attorney General of the State of New York, as special investigator.

Q. I show you original subpoena addressed to the Public Service Gas Company of Newark, New Jersey. Did you have that in your possession?

A. Yes, sir.

Q. Did you make service of a copy of that and exhibit the original to that company? 27249

A. Yes.

Q. Whom did you serve?

A. Percy Ingalls.

Q. Where did you serve him?

A. Newark, New Jersey.

Q. What fees did you give him?

A. Two dollars and a half.

Q. Did you figure out the mileage?

A. Yes.

Q. That was one dollar and a half for one day's attendance?

A. Yes, sir.

27250 Percy Ingalls, Direct.

Q. And five cents a mile coming and going from here to Newark?

A. Yes, sir.

Q. Did you show him the original subpoena?

A. Yes, sir.

Q. And leave with him a copy?

A. Yes, sir.

(Witness excused.)

Mr. Chambers: I ask whether Mr. Ingalls, who was served, is here?

27251

PERCY INGALLS, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. What is your business, Mr. Ingalls?

A. I am secretary of the Public Service Gas Company.

Q. Of 80 Park Place, Newark, New Jersey?

A. 80 Park Place, Newark, New Jersey.

Q. And as secretary you have in your custody and possession, have you not, certain records and papers
27252 of the company?

A. I have.

Q. Were you served with a subpoena to produce those records and papers?

A. Yes.

Q. What day were you served with the subpoena?

A. I don't believe I know. Counsel can probably give you the dates.

Q. Was it the day Mr. Unterweiser testified to a minute ago? Do you remember this young man?

A. I remember the young man, but I didn't notice what he said as to the date.

Q. Well, you were served with a subpoena?

A. I think our counsel has it.

Mr. Chambers: Will you produce a copy of the subpoena?

(Subpoena produced by E. A. Armstrong.)

Mr. Ransom: On whom have you made this call, may I ask?

Mr. Chambers: What call?

Mr. Ransom: To produce this subpoena?

Mr. Chambers: On Mr. Ingalls. He said his counsel had it.

Q. Is this the subpoena? 27254

A. That is it.

Mr. Chambers: I offer in evidence copy of subpoena produced by Mr. Ingalls, now here in court, dated December 30, 1919.

Mr. Ransom: Signed by Alexander Gilchrist, Jr., Clerk?

Mr. Chambers: Signed by Albert W. Chambers, solicitor for the defendant Newton.

Subpoena received in evidence and marked Defendants' Exhibit AA-42.

Mr. Chambers: I offer in evidence the original subpoena.

Subpoena received in evidence and marked Defendants' Exhibit AA-43. 27255

Q. Have you produced the records and papers called for in this subpoena?

Mr. Armstrong: If the Master please—

The Master: Who are you, sir?

Mr. Armstrong: I am one of the counsel to the Public Service Commission—

The Master: What is the name?

Mr. Armstrong: E. A. Armstrong. I am not a member of this court, I suppose.

The Master: I do not believe I can permit you

27256 Percy Ingalls, Direct.

to interrupt this proceeding. The witness will have to answer.

Q. Have you produced the papers and documents called for in the subpoena, Mr. Ingalls?

A. I have with me the contracts.

The Master: That is not upon the ground that you are not a member of this court.

Mr. Armstrong: I am not a member of this court, I am a member of the bar of the United States Supreme Court.

The Master: It is not upon that ground, because I should probably hear you out of courtesy,

27257 as I would hear any counsel. It is upon the ground that counsel for a witness has no right to interrupt the proceedings.

Mr. Armstrong: As I understood it, the examining counsel called for certain papers.

The Master: From the witness.

Mr. Armstrong: I presumed that counsel to the corporation of which he is a servant could there interpose an objection.

The Master: No, I will not permit it. I am not doing it on the ground that you are not a member of this court, because I should assume that the courtesy of the Court would be extended

27258 to you as visiting counsel. It is on the ground that no counsel has a right to interrupt, who is not a party to the proceedings.

Q. Will you produce, as called for in the subpoena, all contracts covering the supply of gas oil entered into between the Public Service Gas Company and the Gulf Refining Company of Texas, and any and all other contracts between the Public Service Gas Company and any other company covering the supply of gas oil during the period 1911 to 1919, inclusive? Will you please produce those documents?

27259

Mr. Ransom: I object to it, on the ground that it is incompetent, irrelevant and immaterial.

Mr. Chambers: I haven't offered them yet.

Mr. Ransom: As your Honor has said, the Public Gas Corporation of Newark is not a party to this case; it does not appear that it has any contractual relation or other relation with any of the defendants, or with the complainant; it does not bear upon any issue of this case.

The circumstances under which contracts may have been made by them from time to time or at any time, under the rules of law with which your Honor is familiar, does not bear upon the 27260
question which is presented here as to this complainant company under the jurisdiction of this legislature, under the statute under attack, under the Public Service Commission's law of the State of New York. This is a corporation in another State, under another legislature, under another jurisdiction, doing business under other conditions and under other statutory requirements. I assume that what counsel has in mind is that by producing contracts made at this time between the Public Service Gas Corporation and some oil company for the supply of some kind of oil for use in that State, that that has some 27261
bearing upon the prices in this State. That is not a competent method of proving prices.

The Master: That is the only question, is it competent?

Mr. Chambers: I haven't offered anything.

The Master: Well, it must be with that in mind; it cannot be for some useless purpose.

Mr. Chambers: I am going to offer them in evidence in a minute when I get them.

The Master: The theory upon which you have subpoenaed this witness and requested him to

27262

produce certain oil contracts is to show that they bought oil cheaper than the Consolidated Gas Company did. Isn't that so?

Mr. Chambers: To show the price of oil in this locality. That is a material question—

The Master: Through the contracts they made?

Mr. Chambers: We have spent a good deal of time on the price of oil in this locality. We are going to show the prevailing price of oil.

Mr. Ransom: The question in this case, if there is any question at all, is a question as to

27263 the market price of oil in this district, in this State, under the conditions prevailing in this State.

The Master: Well, I won't follow you as far as that.

Mr. Hayward: It is in the harbor of New York.

The Master: Newark is pretty close to this State.

Mr. Ransom: But it is elementary law, I think, that you cannot prove a price which one company should pay or did pay, or a price at which it might have procured oil, or any other commodity—

27264

The Master: I am going to sustain the objection.

Mr. Chambers: I haven't offered anything yet.

The Master: You have asked this witness whether he has produced certain papers.

Mr. Chambers: I want them produced so we can mark them for identification.

The Master: Objection sustained on the ground that it is entirely immaterial to this case.

Mr. Chambers: Does your Honor mean that you will not allow them to be marked for identification or produced?

27265

The Master: Yes.

Mr. Chambers: You don't know what they are at all?

The Master: I don't care what they are. My ruling is that a contract made between this company at Newark and some oil company may or may not reflect the value of oil; may or may not be the market value at that time; may or may not have anything to do with what oil was worth or what it should be bought for. If it shows up very high it would not help us in this case, because I should say it doesn't mean anything. If it should show up very low I would say it would 27266
not necessarily mean anything because there may have been some inside arrangement. I will not take the proof.

Mr. Chambers: I ask that they be produced so that I may have them marked for identification.

The Master: I have already ruled on that, I think.

Mr. Chambers: That is, you won't allow me even to have them produced so I can mark them for identification?

The Master: Not for the purposes indicated.

Mr. Chambers: I want to have them here so 27267
I can show the Appellate Court, if it becomes necessary, what they are.

The Master: I will sustain the objection.

Mr. Chambers: You won't allow me to have them marked for identification?

The Master: No.

Mr. Chambers: I except to your Honor's ruling.

The Master: I will let you subpoena the Gulf Oil Company, the Tide Water Oil Company, or some other company to show what they were

27268 selling oil for, or what the market price was, but I am not going to let you bring out from this witness what he happened to buy some oil for. All of these oil companies have offices in New York.

Mr. Chambers: I ask to have produced, so that they may be marked for identification, and later that I may offer same in evidence, the original of which contract I understand is in the possession of this witness as secretary of the Public Service Gas Company of Newark, the following contracts:

27269 A contract between the Public Service Gas Company for upwards of 125,000 gallons of gas oil—

Mr. Ransom: I object to counsel stating these contracts and thereby endeavoring to get this in by indirection.

The Master: Objection overruled.

Mr. Chambers (continuing): Between June 1, 1910, and December 31, 1913.

Another contract between the Public Service Gas Company of Newark, New Jersey, and the Gulf Refining Company, bearing date about May 25, 1913, for 27,000,000 gallons of gas oil.

27270 Another contract between the Public Service Gas Company of Newark, New Jersey, and the Gulf Refining Company for 252,000,000 gallons of gas oil, which contract bears date about the 5th day of August, 1914.

Another contract between the Public Service Gas Company and the Gulf Refining Company dated June 21, 1919, covering 40,000,000 gallons of gas oil.

I except to the ruling not to be allowed to have these contracts produced.

Mr. Ransom: I except to the permitting of a synopsis of those purported contracts to have

been read into the record by the Attorney General.

Q. I now ask you, Mr. Ingalls, to produce, in pursuance of these subpoenas Defendants' Exhibits AA-42 and AA-43, all contracts between the Public Service Gas Company and the Seaboard By-Products Coke Co, with respect to by-product coke oven gas purchased by said Public Service Gas Company, covering the period 1914, to 1919, inclusive?

Mr. Ransom: I object on the grounds already indicated, and on the further ground that this company, not being in any way a party to 27271
this suit, and not in any contract relationship to any party to this suit, either complainant or defendant, that there is no right to call upon it for the production of these contracts, and the contracts have no possible bearing on the issue of this case, and their production and disclosure should not be required.

The Master: What is the purpose of this request?

Mr. Chambers: I want to show by these contracts the price that this company paid for by-product coke oven gas in this locality.

The Master: Objection sustained. 27273

Mr. Chambers: And also what by-product coke oven gas could be made for during the time in question, 1914 to 1919, in this locality.

The Master: Same ruling.

Mr. Chambers: That is, you will not allow me to have the contracts produced?

The Master: No.

Mr. Chambers: So that I might have them marked for identification?

The Master: That is my ruling.

Mr. Chambers: Exception. I might say for the record that I have no memorandum as to

27274 Percy Ingalls, Direct.

the date of these contracts nor any information in my possession by which I could state categorically the contracts; but I will say generally that if these contracts were produced I would then ask that they be received in evidence. I would offer them in evidence for the purpose of showing the prevailing price in this locality during the time mentioned of by-product coke oven gas, and also what the companies were paying for by-product coke oven gas during the same period, which I think is material in the case.

27275 The Master: My ruling stands.

Mr. Chambers: Exception. I would like to ask the witness if he did have those contracts?

Q. Did you have those contracts?

A. Yes.

Q. Between your company and the Seaboard By-Product Coke Company?

A. Yes.

Mr. Chambers: I understand the ruling is that you will not allow him to produce them even for identification.

The Master: No.

Q. Did you produce, or have you letters and correspondence relating to these contracts between your company and the Seaboard By-Products Coke Company?

27276

A. No.

Q. You didn't have those?

A. Nothing material.

Q. Well, nothing material—there was some correspondence?

A. I don't know of any.

Q. How about a contract between your company and other companies covering the supply of gas oil—were there any others?

A. I have none.

Q. So the only contracts you have are those between your company and the Gulf Refining Company, so far as gas oil was concerned?

A. Yes, sir.

Mr. Chambers: That is all.

The Master: Any cross-examination?

Mr. Ransom: No, not at this time.

The Master: Well, this is the time.

Mr. Ransom: Well, they haven't brought out anything.

The Master: All right. I am not postponing my cross-examination except under unusual circumstances. 27278

(Witness excused.)

HENRY UNTERWEISER recalled.

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Did you receive from me an original subpoena?

A. Yes, sir.

Q. Is this it?

A. Yes, sir.

Q. Addressed to the Brooklyn Borough Gas Company? 27279

A. Yes, sir.

Q. And did you have a copy of it?

A. Yes, sir.

Q. Did you go to the office of the company at Coney Island and make service of the subpoena?

A. Yes, sir.

Q. Whom did you serve?

A. Miss Dillon.

Q. What office did she hold in the company?

A. I am afraid I can't answer that.

27280 Henry Unterweiser, Direct.

The Master: What did you do, serve it on the stenographer?

The Witness: No, she was an officer of the company; I have forgotten just what office she did hold.

Q. General manager, wasn't it?

A. General manager, I think.

Q. Well, she accepted the subpoena for the company?

A. Yes, sir.

Q. And she was in charge of the office there?

27281 A. Yes, sir.

Q. Appeared to be?

A. Yes, sir.

Q. What fees did you pay her?

The Master: You haven't proved any service on the company.

Mr. Chambers: I have not?

The Master: No.

Mr. Chambers: Why not?

The Master: Because this witness does not know what position she held.

Mr. Chambers: General manager.

The Master: No, he doesn't know, and I do not believe anyway that is an officer qualified to receive subpoenas.

27282

Q. What fees did you give here?

A. $2.50.

The Master: There is no use wasting time. I shall rule, if it comes to me, that there was no service.

Mr. Chambers: I offer the subpoena in evidence.

Mr. Ransom: There is no proof of service, no such proof has been made. The mere proving of an unserved subpoena—

The Master: Of course, if a witness is here and cares to take the stand—

Mr. Ransom: I object to the offer on the ground that no foundation has been laid.

The Master: Is there an officer of the Brooklyn Borough Gas Company here?

Mr. Chambers: I am going to ask Mr. Thompson, the counsel, to take the stand.

WILSON W. THOMPSON, called as a witness on behalf of the defendants, being duly sworn, testifies as follows: 27284

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Are you counsel for the Brooklyn Borough Gas Company, or your firm?

A. Yes.

Q. What position does Miss Dillon hold, on whom this subpoena was served?

A. At the present time I don't know her exact official position.

Q. Isn't she general manager?

A. Not to my knowledge.

Q. Who are the officers of the company? 27285

A. David Austin is the president; John Gribell is vice president; C. E. Pratt is secretary and treasurer.

Q. Who is general manager?

A. There is none now, so far as I know. A Mr. Woodall was formerly the general manager, but he resigned some time ago. I do not know that any general manager has been appointed since his resignation.

Q. Isn't she general manager?

A. No.

Q. She is not assistant manager?

A. Assistant general manager?

Q. Assistant manager or general manager, yes?

A. No, I never knew her to have that position.

Q. She is in charge of the office at Coney Island, isn't she?

A. That is a question I would not like to answer.

Q. Did she turn over this subpoena to you?

A. No.

Q. You are here representing her, aren't you?

A. No.

27287 Q. You are here representing the Brooklyn Borough Gas Company?

A. I am.

Q. How did you know she was subpoenaed to come here?

Mr. Ransom: I object to this, quite immaterial.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Why, she telephoned me in that regard.

Q. She telephoned she had been subpoenaed?

A. Yes.

Q. And what is your point about the subpoena?

27288 A. Why, that—

Q. You came—

A. I came here.

Q. To make some—

A. To make a motion to quash the subpoena.

Q. On what ground?

A. On the ground that no party to this suit has a right to subpoena the private papers of a third party who is not a party to this suit.

Q. You are not here to urge the grounds that we did not serve the Brooklyn Borough Gas Company?

A. No, because I do not know whether you have or not.

Q. You don't care whether we have or not?

A. I don't know whether you have or not.

Q. Well, you are a lawyer. Don't you think that this is good?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Mark that, please, in evidence.

The Master: You cannot mark it in evidence.

Q. These officers you have named, where do they reside, where may they be found?

A. In or about Philadelphia.

Q. Well, I would like the address of the president? 27290

A. I do not know that. David Austin is chairman of the Federal Reserve Bank of the Philadelphia District.

Q. You don't know where he can be found?

A. At the Federal Reserve Bank.

Q. Federal Reserve Bank in Philadelphia?

A. Yes

Q. And the other two officers you named?

A. Mr. Platt, I think his address is 1104 Franklin Building, Philadelphia. I won't be sure of these addresses, because I am simply recalling them from memory. 27291

Q. And the other one?

A. Somewhere in Philadelphia, but he is a very prominent man in Philadelphia.

Q. So there is no officer you know of that is in the State?

A. None whatever.

Q. It is a domestic corporation, isn't it?

A. It is.

Q. And this place where Miss Dillon was served is the place of business of the corporation?

A. That is its—

Q. Do you know of any other place of business of that corporation except that?

A. None whatever.

Q. And she is there in attendance, isn't she, and the only person there who represents the company?

A. Oh, no, they have a staff of fifty or a hundred people there.

The Master: Who is in charge of the office there?

Q. She has charge of the office records and papers, hasn't she?

27293 A. So far as I know.

Q. I mean, she is the person having the authority there?

A. So far as I know, yes.

Q. And she has represented the company before the Public Service Commission in various matters?

Mr. Ransom: As a witness.

The Witness: No. She has testified.

Q. Testified?

A. As a witness.

Q. Do you remember what she testified her position was?

A. I do not recollect just now.

Q. Why don't you recollect, lapse of memory?

27294 A. No.

Q. Or is it because you are afraid you may say—

A. I think it was office manager.

Q. Well, that is what she is then, isn't it, office manager?

A. I don't know. There may have been some change in her position since Mr. Woodall resigned as general manager, but of that I have no knowledge.

Q. Didn't you represent her and the company before the Commission?

A. I did not represent her; I represented the company.

Q. And she testified for the company?

A. She was a witness on behalf of the company.

Q. Have you produced here the papers and documents mentioned in this subpoena?

Mr. Ransom: I object, incompetent, immaterial and irrelevant.

Q. Did you direct Miss Dillon not to produce them?

A. On my advice, I told her not to produce them until the Master had so directed, that I would come to court this morning and move to quash the subpoena; if the Master insisted on the production, I 27296
would ask for an opportunity for her to come later.

Q. On what grounds did you direct Miss Dillon—by the way, what is Miss Dillon's first name?

A. Mary E.

Q. Mary E. Dillon?

A. Yes.

Q. On what ground did you direct her not to produce the books?

Mr. Ransom: Objected to as not within any issue in this case, it calls for the disclosure by the witness of a communication between himself and his client.

The Master: Objection sustained. 27297

Q. Is she your client?

A. No.

Mr. Ransom: The client is the company.

Mr. Chambers: You see how that goes right out of the window.

Q. What did you say, if anything, to her with reference to producing the books and papers or the contracts and papers set forth in defendants' subpoena? Has this been marked?

The Master: I won't take it as an exhibit.

Mr. Chambers: Why not?

27298 The Witness: Because I do not think it is proper in the case to take that as an exhibit. If it is marked for identification, what does it prove in this case?

Mr. Chambers: I offer it in evidence.

Mr. Ransom: Objected to on the grounds already stated.

The Master: Objection sustained.

Mr. Chambers: Exception. Mark it for identification.

Subpoena marked Defendants' Exhibit AA44 for identification.

27299 The Witness: If the Master directs these papers to be produced, I will produce them and then make objection at the proper time to their being offered in evidence by either party to this suit. I am not quibbling. They are at my office.

Mr. Chambers: I ask the Master to direct him to produce the papers.

Mr. Ransom: I object to it.

Mr. Chambers: To wit, all contracts, letters and writings relating to the furnishing of gas oil from 1904 to 1913, between the Brooklyn Borough Gas Company and companies supplying them.

27300 The Master: For what purpose?

Mr. Chambers: For the purpose of showing the prevailing price of gas oil in this locality.

The Master: How will that show the prevailing price of gas oil? It will show what they paid.

Mr. Chambers: We are going to put them all in and show—not all, but we will put in enough—

The Master: The request to produce the papers is denied.

Mr. Chambers: Your Honor might be courteous enough to let me finish my sentence. I

27301

said, "We will put in enough," and you broke in, without permitting me to finish my sentence, which is, we are going to produce enough contracts made during the period in question here, we think, to show any fair minded Court what was a fair and reasonable price for gas oil, what it could be purchased for in the market during the time in question, and your Honor has said over and over again that the question of what was the price of oil, and what was the price of coal, was very important in the case.

The Master: Yes.

Mr. Chambers: And it is an important issue? 27302

The Master: Yes.

Mr. Chambers: And it is material and it is competent, and this is the way to do it, we feel satisfied.

The Master: I do not think it is, that is where you and I differ.

Mr. Chambers: These are actual contracts entered into by various companies right within a stone's throw, almost, of the Consolidated Gas Company.

The Master: I do not think it is proper.

Mr. Chambers: Public service corporations, and are proof of market value, taken together, 27303 when tables are made from them.

The Master: No, I shall decline the request for the production.

Mr. O'Brien: Does your Honor base that on the fact that the witness is not the proper witness to show that because not the secretary of the company that entered into the contract?

The Master: I have made my ruling.

Mr. O'Brien: Your Honor does not care to state the ground on which it is based?

The Master: I won't elaborate; the record speaks for itself.

Mr. Chambers: The witness said he would be willing to produce these papers if you directed.

The Master: I say I won't direct them, because I think it would be a useless production. I do not think it is proper proof.

Mr. Chambers: Well, will your Honor direct him then, so that I may offer them?

The Master: No.

Mr. Chambers: Or at least have them marked for identification.

The Master: With what oil companies do you say that these contracts were made?

27305

Mr. Chambers: These were made with the—

The Master: I will let the witness tell, if he knows, from whom they bought their oil.

The Witness: That I do not know.

The Master: Well, you have the papers there and can tell us that easily enough?

The Witaess: Yes, I can refer to them. I have not looked at the contracts. They were sent up to my house yesterday afternoon, in an envelope, and I have not looked at them.

The Master: I will let you bring out, if you haven't that information, from whom they bought oil.

27306

Mr. Ransom: That is all part of the Public Service Commission records.

Mr. O'Brien: Oh, it is public record, it is in the Kings County case, your Honor, received by Judge Greenbaum, not in exactly the same form, but received nevertheless.

Q. Did you say what companies they were made with?

The Master: He says he did not look at them.

The Witness: I have not looked at them.

27307

The Master: Will you look at them and come back and tell us what companies they bought oil from.

Mr. Ransom: I object to that.

The Master: Well, I will take that.

Mr. Ransom: He is not a proper person to testify.

The Master: He has the contracts, and he can testify.

Mr. Ransom: He is a mere counsel, and the testimony is really hearsay.

The Master: He will look at the contracts and say he has the original contracts, and he 27308
can testify after looking at them that the Brooklyn Borough Company bought oil from certain oil companies during certain years.

Mr. Ransom: How does he know they were original contracts?

The Witness: They may not have bought a dollar's worth of oil on those contracts.

Mr. Ransom: I am willing to concede in behalf of the complainant, for the purposes of this trial, that this Brooklyn Borough Gas Company as shown by the records on file with the Commission, has purchased oil, gas oil, from the Standard Oil Company of New York, and from 27309
the Gulf Refining Company.

The Master: If Mr. Chambers wants to take that, he can use it for what it is worth; if he does not, I will let him spread it on the record.

Mr. Chambers: Are you all through?

Mr. Ransom: Through with what?

Mr. Chambers: With your statement, so that I can go on. I have a few more questions, and we are in a hurry here.

Q. Have you these contracts in your possession? I do not think I asked you that question?

A. I have.

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial.

The Master: The witness has already stated he had, and he has repeated it again.

Q. They are in your office, and can be produced by you, if subpoenaed? I suppose you won't divest yourself of them, will you, until I can serve you with a subpoena?

27311 A. I do not think that is a very nice question to ask. I will answer it.

The Master: You need not serve Mr. Thompson with a subpoena. In lieu of the written subpoena, I will direct Mr. Thompson to the same extent that a subpoena would, and in the same form, and carrying no further weight with it than if you served the paper on him to produce those papers here at two o'clock, if that is what you want.

Mr. Chambers: Yes.

The Witness: I am not here to quibble, Mr. Chambers.

27312 The Master: No, but there is no necessity—

Mr. Chambers: You have no legal obligation to keep them, but I was going to ask you as an officer of the court to keep them until we straighten this out, and I want you to raise your objection to it. I am through, if Mr. Thompson at his convenience, after recess, will bring them around, subject to any objections he wants to raise to them.

The Master: He does not have to bring them around any more than if you served a written subpoena on him.

27313

Mr. Chambers: That is right.

The Master: In other words, I am serving an oral subpoena on him to save you the trouble of writing a written subpoena.

Mr. Ransom: We object.

The Master: But what I would like to have Mr. Thompson do is to look at them between now and two o'clock, so that he can answer the question: Have you certain contracts, and between what companies are they?

Mr. Ransom: I think if there is going to be any testimony regarding these contracts, they ought to be produced here by some proper officer 27314
of this company. A counsel who has a remote hearsay knowledge is not a proper witness to testify to them, and I do not think—

The Master: I think Mr. Thompson can tell us who they bought oil from.

The Witness: May I make a suggestion, that may save your time? If I produce a statement from the company showing since 1904, what companies they bought oil from, the amounts that they bought, and the price paid for it, in the form of a statement, will that be sufficient?

Mr. Chambers: Well, counsel on the other side will make me prove the contract. 27315

Mr. Ransom: Obviously incompetent.

Mr. Chambers: That is what I want to prove, of course, but I have to do it by offering these contracts.

The Witness: Well, the contract won't show how much was purchased under it. There may not have been a gallon purchased under it, so far as I know.

Mr. Chambers: We will take care of that. We are just laying the foundation.

(Witness excused.)

27316 Henry Unterweiser, Direct.

HENRY UNTERWEISER recalled.

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Did you receive from me an original subpoena addressed to the United Gas Improvement Company, of Philadelphia?

A. Yes.

Q. With a copy?

A. Yes.

Q. And did you go to Philadelphia?

A. Yes, sir.

27317 Q. And did you serve the United Gas Improvement Company with a copy of the subpoena?

A. Yes, sir.

Q. Did you show them the original?

A. Yes, sir.

Q. Who was the officer you served?

A. I. W. Morris, treasurer.

Q. He was treasurer?

A. Yes, sir.

Q. Did you pay him any fees?

A. Yes, sir.

Q. How much?

A. $10.50.

27318 Q. Was that $10.50 for a day's attendance and five cents a mile to and from Philadelphia to here?

A. Yes, sir.

The Master: How many miles?

The Witness: 90 miles, sir.

The Master: What is the rule as to service outside of the state, outside of the district?

Mr. Chambers: Five cents a mile.

The Master: How far does the jurisdiction extend?

Mr. Chambers: 100 miles.

The Witness: 100 miles.

Q. And what date did you serve him, do you remember?

A. The last day of the year, sir, December 31st.

Q. And is this the original of the subpoena?

A. Yes, sir.

Mr. Chambers: I offer it in evidence.

Mr. Ransom: I want to ask a few questions about it.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Had you ever seen Mr. Morris before?

A. No.

27320

Q. And was he a person with whom you were in any way acquainted?

A. No, sir.

Q. Do you know who the officers of that company are?

A. No, sir.

Q. How long did you talk to Mr. Morris?

A. About five minutes. I sent to the officer of the company by the attorney for the company. The attorney for the company had been in conference with me for an hour or more.

Q. How long were you with Mr. Morris, or this person whom you think was Mr. Morris?

27321

A. Five minutes or so.

Q. Did you tell Mr. Morris that you wanted him to come?

A. No, sir.

Q. What did you say about who should come?

A. I said, "If you will get in touch with your attorney, he will direct you as to what to do," and he telephoned to the attorney, in my presence, they are in the same building, on different floors, and told him that he had been served with a subpoena and had been paid $10.50. As a matter of fact, before I served him I told him I had been sent to him by the

27322 J. A. Pearson, Direct.

attorney because the attorney had 'phoned around the building to try and locate an officer, and apparently the only officer he could find was Mr. Morris.

Q. You don't know whether Mr. Morris was treasurer of this company, do you?

A. Nothing except what the attorney told me.

Q. And you don't know anything about whether this man you saw was Mr. Morris or not?

A. Except what he told me himself, his name was Mr. Morris, and he was the treasurer of the company. That is all I know.

27323 Subpoena marked Defendants' Exhibit AA45 for identification.

Mr. Chambers: Mr. Morris, I am informed by the purchasing agent of the company, is not in court, but the purchasing agent is. Of course, I do not insist on Mr. Morris being here personally. All I want are the records and documents called for in the subpoena. And the attorney for the company is here, Mr. John H. Minds.

J. A. Pearson, being duly sworn, testified as follows:

27324

Direct-examination by Mr. Chambers:

Mr. Minds: I am attorney for the company, and I would like to offer an objection to Mr. Pearson being called upon to testify.

The Master: You cannot do it in that way.

Mr. Chambers: I want to extend any courtesy I can.

The Master: He cannot move in that way. If he wanted to relieve the witness of a subpoena, he should have moved before the District Judge

to quash the subpoena. The witness is here, and I won't permit any counsel except counsel in the case to make objections now.

Mr. Pearson, you are the purchasing agent of this company. What is the name of it?

The Witness: United Gas Improvement Company.

The Master: Do you want to prove by this witness what gas oil was bought?

Mr. Ransom: They have asked for contracts.

The Master: No, they have not asked for anything yet. 27326

Q. What office do you hold with the company?

A. Purchasing agent.

Q. Have you in your custody and control all contracts called for by this subpoena that was served on you?

A. They are here, yes, sir.

Q. That was served on the treasurer?

A. They are here.

Q. You have them in court?

A. Yes, sir.

Q. I ask if you will produce them?

Mr. Ransom: I object on the grounds already stated as to other witnesses called to produce— 27327

The Master: I will take it. The purpose of production of the contract is the same purpose as shown for the other witnesses. Objection sustained. I will let you ask the witness if he knows what gas oil is selling for.

Mr. Ransom: If he knows.

Mr. Chambers: I did not call him for that.

The Master: I don't care anything about it. I thought you wanted to get some facts here.

Mr. Chambers: Yes. I want to put in the original contracts.

The Master: Objection sustained.

27328 Mr. Chambers: May I go through the same procedure I did before? I ask that the witness produce in court here, so that I may have them marked for identification, all contracts relating to the supply of gas oil entered into since the year 1913, between the United Gas Improvement Company and the Gulf Refining Company of Texas, and any and all contracts entered into between the United Gas Improvement Company and any other company for the supply of gas oil during the same period, together with all letters and correspondence relating to the term of said con-

27329 tract, and request that they be produced, so that I can have them marked for identification.

The Master: You are making a request of the witness?

Mr. Chambers: No, I am making a request of the Court.

Mr. Ransom: I object to its being required, on the grounds already indicated.

Mr. Chambers: I was asking the Court. The witness says he has them, and I understood you to say you would not let him produce them. Now, I ask specifically that he produce them here, and you rule that he produce them, so that I may

27330 have them marked for identification.

The Master: No, the motion is denied upon the ground that they are not relevant to this issue, and not material.

Mr. Chambers: Exception.

The Master: Not the proper way to prove the fact.

Mr. Chambers: At least if they are not relevant, I ought to be permitted to mark them for identification, is my point, and your Honor denies that.

The Master: Yes.

Mr. Chambers: Exception.

Q. Now, the contracts called for in the subpoena, and which you have in court, were they all between the United Gas Improvement Company and the Gulf Refining Company of Texas?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial, not within the issues of this case.

The Master: I will let him state whom he bought his oil from. I will let this witness state what was paid for it, what the market was, and what he had to pay for it. I am willing to let that in, and I am willing to let any of the wit- 27332
nesses state that, if they know from knowledge what the market price of oil was, what they paid for it, and whom they bought it from, but I won't let the contracts in because they are not proof of any fact, they do not prove anything. A contract may be made easy enough which might have varying outside features.

Mr. Chambers: Well, I cannot prove the whole case at one hop, skip and jump.

The Master: If you really want to know how much gas oil could be bought for, and from whom, at a certain time, you could ask this witness a question, couldn't you, if you really wanted 27333
it?

Mr. Chambers: Then they would raise the question as to quality?

The Master: Why, certainly they will.

Mr. Chambers: And that is all in the contract?

The Master: You can ask a question that will limit it to the same kind of oil they have here.

Mr. Ransom: From the viewpoint of the complainant the question of what the United Gas Improvement Company might be paying in this or that remote city, has no bearing upon any issues in this case.

27334 J. A. Pearson, Direct.

The Master: It may and it may not, but I will take this proof. Mr. Pearson is a purchasing agent, familiar with the market, buying oils, knowing the people who sell oil, knowing the places where you buy oil, knowing the different characters of oil, and I will let him testify, if he knows as a fact, from human knowledge, what gas oil was being offered for, and where it could have been bought, to indicate that your company was not getting the best oil at the best price.

Mr. Ransom: For barge delivery in New

27335 York?

The Master: I don't care about that. If this witness can give us any information bearing on it, and Mr. Chambers wants to get it, I will take it.

Q. Now, will you get your contracts, please?

The Master: He doesn't have to get his contracts.

Q. Can you tell me what you paid for gas oil in 1913, your company, and the quality of it?

A. What our company paid for the 1913 oil, at what place?

Q. Well, the oil in Philadelphia?

27336 Mr. Ransom: I object to it as immaterial and incompetent, not within any issues in this case.

The Master: I won't take that. I told you I would take this witness's statement, if he knew the market, if he knew what oil was being offered for of various grades, that is what I will take, but I won't take what he bought oil for.

Mr. Chambers: Exception. May I say for the record that I trust the Master has not forgotten entirely the testimony of Mr. Addicks on the subject of oil and oil contracts and market price?

The Master: Why, no, I have not forgotten, Mr. Chambers. My theory of it is this—

27337

Mr. Chambers (interrupting): I thought perhaps you had, in view of your ruling.

The Master: No. My theory of it is this: The complainant proved that it had paid certain prices for oil. You required them to produce the contracts, and they produced them. Mr. Addicks testified that was the best price he could get oil for, delivered in the way that he wanted. Now, you have a right to come in and show by the Texas Oil and the Gulf Oil and Tidewater Oil and Standard Oil of New York, that Mr. Addicks was not telling the truth.

27338

Mr. Chambers: Mr. Addicks said he could not make any better contracts.

The Master: Yes.

Mr. Chambers: Now, I am going to show that he could.

The Master: Oh, that doesn't give us—I am trying to explain to you.

Mr. Chambers: I am going to show that his neighbors made contracts, better contracts.

The Master: I am going to show you the reason for my ruling, that is my reason.

Mr. Chambers: I don't care, your Honor cannot convince me that it is erroneous.

27339

The Master: If you don't care to hear my reason, I won't state it.

Mr. Chambers: I will be glad to have it.

The Master: My theory of it is this: You can call the Gulf Oil Company, or some sales manager or a man who would know about it there, and prove by him that Mr. Addicks was not telling the truth, that they had made contracts for quantities of oil, had made them with various companies.

Mr. Ransom: That they would with the Consolidated.

27340

The Master: That the Texas Oil Company or the Tidewater Oil Company could do it. Your difficulty is that you are calling Mr. Pearson and asking, "Did you make a contract" and if I let you go on you will prove they made a contract for a certain quantity of oil under certain terms, delivered in a certain way, and you produce the Brooklyn Company and show the same thing, and then the Philadelphia Company and show the same thing, and you have shown three particular instances where three particular companies did manage to get certain contracts from certain
27341 people under certain circumstances, then you put the complainant in the position where they have got to go around getting other companies showing that they did not get contracts at higher prices or different terms. I do not think it proves anything.

Mr. Ransom: From the viewpoint of this complaint, and I think under the authorities we are right about it, the question in this case is this: We having said that Mr. Addicks with the efforts which he described having brought about the approval of certain contracts, approved by the Executive Committee, the question is, can the de-
27342 fendants show that better contracts could have been made by the Consolidated Gas Company of New York for the delivery of gas oil to it here.

Mr. Chambers: Yes, the defendants can.

Mr. Ransom: But you do not show that by proving that some company in the west or in Philadelphia or here or there did make a different contract.

The Master: I am going to let the defendants show, if they can, under what I conceive the proper rule of evidence, that the Consolidated Gas Company if it had not decided as it did, and

27343

as I am inferring from Mr. Addicks' testimony that the most satisfactory company to do business with, and the only company that they could rely upon was the Standard Oil Company of New Jersey—

Mr. Chambers (interrupting): Mr. Addicks did not go that far.

The Master: I know he did not, but I am ruling that this testimony in substance amounts to that.

Mr. Ransom: He said the question never came up.

27344

The Master: He admitted in substance, in answer to my questions, that these letters written to other companies inviting bids were formalities; he did not expect them to put in a serious bid.

Mr. Ransom: Well, he did not expect that they would bid.

The Master: In the last analysis he had made up his mind that the best result the company could get was from the Standard Oil Company, and he left a very clear impression on my mind that they did not want to do business with anybody else.

27345

Mr. Ransom: I would like to call your Honor's attention to the record, if you are under that impression. Mr. Addicks did say that he never had the question up with the Executive Committee as to whether they would make a contract with any other company, because he had never been able to get from any other company, so far, up to the time that he testified, an opportunity of getting oil which so far as quality or price or conditions of delivery were concerned, was comparable with the one they did get from the Standard Oil Company of New Jersey.

27346

The Master: Do not let us argue that question. If the defendant can get any officer of the Gulf Refining Company or the Tidewater Company or the Standard Company or any other to say that these bids were tendered to them from the Consolidated, that they did not bid on it because their experience was it was a useless thing, and that they were perfectly willing to deliver and prepared to deliver oil of the quality required under certain circumstances, I will take that and would be glad to get it.

Mr. Ransom: If they can show that there were companies willing to sell and deliver here at certain prices.

27347

The Master: The proof that certain particular contracts were made does not bear out that contention and is not proper proof.

Mr. O'Brien: They do make the contention, and it has been made by gas companies, that there is such a thing as a normal price.

The Master: There was one letter written by one of the selling agents of one of the oil companies, in which he said in substance: "What is the use of giving you a bid, we cannot get your business anyhow?"

27348

Mr. Ransom: There was no such letter.

The Master: There was.

Mr. Ransom: I submit that there was no such letter.

The Master. That was the substance of it.

Mr. Ransom: There was a statement of a conversation, not a letter.

The Master: Well, there was a statement of a conversation, and there was an intimation somewhere, "What is the use of handing your company a bid, we cannot get your business anyhow." I would like to have that witness on the stand

and tell us what he knows about it, and I would like to have the defendant show that Mr. Addicks could have gotten oil for one or two or three cents cheaper than he did get it. If there is any evidence like that we would like to have it, the public would like to get it.

Mr. Ransom: And we would like to have it.

The Master: Go on with your next question.

Mr. Chambers: I might just say in passing that while it would be perhaps easier to subpoena the oil companies, still I am now trying to find out what companies they did business with, if I 27350
have my premise correct that they did business with certain oil companies.

The Master: I will let you bring that out, with whom they did business, whom they bought their oil from.

Q. Were all your contracts, from 1913 down to date with the Gulf Refining Company of Texas for gas oil?

Mr. Ransom: You are speaking of The United Gas Improvement Company?

Mr. Chambers: I am speaking of the witness, and he represents only The United Gas Improvement Company. 27351

The Master: Did your Company buy the oil exclusively from the Gulf Refining Company since 1913?

The Witness: No.

Q. What companies did you buy from? Take 1913, whom did you buy from; who were your contracts with?

A. I will have to trust to memory on that a little.

The Master: Have you anything here that would refresh your recollection; have you your contracts?

The Witness: Yes.

Mr. Chambers: Well, do it, will you?

The Master: Get your contracts and refresh your recollection.

Mr. Chambers: Mr. Pearson, only so far as the Philadelphia business is concerned, if you please.

The Master: What is the difference?

The Witness: Well, The United Gas Improvement Company does not buy any oil from Philadelphia.

27353 Q. Do you buy oil from the Equitable?

A. Yes.

Q. This will be the question; In 1913, refreshing your recollection from some papers or documents you may now have in your possession, for that year, from whom did your company or the companies that you represent, so far as the Philadelphia business is concerned, buy their oil?

Mr. Ransom: I object to the question. It is incompetent, immaterial and irrelevant; it particularly does not specify companies. Here they say they want the Philadelphia contracts. That is what they think they have subpoenaed, and it ap-

27354 pears that The United Gas Improvement Company does not buy oil from Philadelphia.

The Master: Objection overruled. I am going to let Mr. Pearson say what companies were selling oil in 1913.

Mr. Ransom: Were selling oil?

The Master: Yes, as far as Philadelphia is concerned. I do not care how the question is put; we want to find out what oil companies there were now.

A. Let me see if I have this straight. You want to know only about Philadelphia?

Q. That locality. Stick to the Philadelphia business.

A. And you want to know what companies were supplying oil, or what companies we purchased from?

Q. What companies you purchased from.

A. Well, in 1913, our contract was made with the Gulf Refining Company for Philadelphia.

Q. 1914. The same question.

A. In 1914 the contract was for five—I beg your pardon, 1913 was with the Gulf Refining Company, but that was a long term contract running out, and a new contract was made in 1914 for five years with the 27356
Gulf Refining Company. Does that answer it?

Q. That carries us to 1918, does it?

A. 1919.

Q. To 1919.

A. Yes.

Q. Next after 1919, when that 4-year contract expired—

A. (Interposing.) 5-year contract, Mr. Chambers.

Q. Excuse me. When that 5-year contract expired in 1919, then with whom did you make your contract?

A. The Gulf Refining Company again.

Q. The same company? 27357

A. Yes.

Q. How long did that contract extend?

A. That contract is at present in force and is for one year.

Q. That expires sometime in 1920?

A. There are two, Mr. Chambers. There are two contracts.

Q. Would you mind telling us the date when it expires—the 1919 contract?

A. One contract expires on the 1st day of October, 1920, and the other one on the 1st day of December, 1920.

27358 J. A. Pearson, Cross.

Q. Both with the same company, the Gulf Refining Company?

A. Yes, both made at the same time.

Mr. Chambers: That is all there is, except your Honor does not allow me to offer these contracts.

The Master: No.

Mr. Chambers: Exception to that. You may cross-examine.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Pearson, during the period of this 5-year
27359 contract were you obliged to purchase oil from any other source?

A. Yes.

Q. During one or more years of that period did the Gulf Refining Company fail to deliver the contract quantity?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. Hayward: He said 1913 was part of a 5-year period, and then he entered into a 5-year contract.

The Master: No, the only 5-year contract he mentioned was in 1913. The other was a 4-year
27360 period.

Mr. Chambers: I object to that upon the ground that the contracts are not in evidence, they have been ruled out.

The Master: I will allow the question.

Mr. Chambers: Exception.

A. No, they did not deliver all the oil.

By the Master:

Q. That is rather an ambiguous answer to that question.

A. Let me get it again.

Q. Did they fail?

A. They did fail, yes.

By Mr. Ransom:

Q. From what other companies did you then buy oil?

A. From what other oil companies?

Q. Yes.

A. From the Atlantic Refining Company, from a concern in Oklahoma, who shipped oil in by train, and I cannot remember the names of the other companies.

Q. Did you have to buy it in the open market?

A. Yes.

Q. Wherever you could get it? 27362

A. Oh, yes, it was bought in the open market.

The Master: And did you know the market prices at that time, when you bought in the open market?

The Witness: Yes, sir. I might say in connection with that that the reason the Gulf Refining Company did not deliver the oil was because the Government commandeered half of their fleet of tank vessels, and they were unable to deliver oil.

It was during 1917 and 1918, during the years when the country was at war. All the oil from the Gulf Refining Company comes from Texas, and has to be transported in tank boats. 27363

Q. What price did you have to pay for this oil that you bought in the market at that time?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, not cross-examination, unless he wants to make him his own witness.

Mr. Ransom: I will withdraw it.

The Master: Anything else?

Mr. Ransom: No.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. So the failure to deliver the oil under that 5-year contract was not attributable to any fault of the Gulf Refining Company, was it?

Mr. Ransom: I object to the question. I do not know whether the witness knows.

The Master: I will allow it.

Mr. Ransom: Exception.

A. No, it was not due to any fault of the Gulf Refining Company.

Q. And you had such confidence in the Gulf Re-
27365 fining Company that you made a new contract after that episode?

A. Yes.

Q. The episode of their failure to deliver?

A. Because as soon as the vessels were restored the Gulf Refining Company resumed their deliveries.

Q. Under the 1913 contract did the Gulf Refining Company deliver the oil therein prescribed?

A. During the year 1913?

Q. Did they deliver all the oil covered by that contract?

A. Yes.

Q. And the 1914 contract?

27366 A. Up until the time that the Navy took the steamers.

Q. Did they deliver all of the oil covered by the 5-year contract made in 1914, expiring in 1919, after they got their boats back? Did they finally deliver it?

A. Do you mean the total quantity?

Q. Yes.

A. No.

Q. They have not yet delivered the total quantity?

A. No, and they won't, because the contract calls for requirements up to a certain amount, and in water gas practice the Operating Department cannot always

figure on exact quantities. We simply have made a contract to cover all the oil that we needed in those five years. At the end of the contract the amount of oil that was not delivered and had not been specified by us was not to be sent, and we considered that a proper performance of the contract.

Q. Then in your judgment, representing one of the parties to the contract, it was performed?

A. It was performed.

Q. And the Gulf Refining Company lived up to their contracts?

A. Absolutely. 27368

Mr. Chambers: I now offer in evidence the contracts spoken of by the witness, that of 1913 and the 5-year contract for 1914, in evidence.

Mr. Ransom: Objected to as immaterial, not within any issue of the case.

The Master: Objection sustained.

Mr. Chambers: Exception. I now ask again that they be marked for identification, the witness having them in his hand.

The Master: Application denied.

Mr. Chambers: Exception. That is all.

RE-CROSS EXAMINATION BY MR. RANSOM: 27369

Q. During this time, Mr. Pearson, that you say you had to buy oil in the open market, you were familiar with the prices which prevailed at that time in the market?

A. Yes.

Q. And you know the prices that were offered and quoted to you? You know the prices of oil that were offered and quoted to you during that time?

A. Do you mean during the period that we had to buy?

Q. In the open market?

A. Yes.

27370 Laban Howland, *Direct.*

Q. What was the market price at that time?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. Hayward: Not proper cross-examination.

Mr. Chambers: He is trying to do it under the guise of cross-examination, and it is improper.

The Master: Objection sustained.

Mr. Ransom: Exception.

The Master: If they do not want to prove that I do not believe you have any right to go into it again.

27371 Mr. Ransom: Well, if they do not want to.

Mr. Chambers: That is not the point. That was an usually abnormal situation.

The Master: But you could prove what it was under this abnormal situation.

Mr. Ransom: The companies had to pay it, even though it was abnormal.

The Master: Not if you made a 5-year contract.

Mr. Chambers: We are prepared to prove this by the contract, which I think is the best evidence.

The Master: Anything else, Judge Ransom?

Mr. Ransom: I think not. I have nothing.

27372

Laban Howland, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct-examination by Mr. Chambers:

Q. Mr. Howland, where are you employed?

A. In the office of the Gulf Refining Company.

Q. That is a Texas corporation?

A. To my knowledge it is.

Q. And is this one of their many offices?

A. Yes, sir.

Q. A branch office or New York office?
A. Yes, sir.
Q. And they are engaged in the oil business?
A. Yes, sir.
Q. Gas oil business?
A. Yes, sir.
Q. Along with their other business?
A. Yes, sir.
Q. Were you served with a subpoena to produce certain records and documents?
A. I was not.
Q. Or the company I would say. 27374
A. Mr. Lyon was.
Q. And you are here representing him?
A. As his representative.
Q. What is your position with the company?
A. I am simply a clerk in the office.
Q. And pursuant to the subpoena you did produce here at least ten contracts?
A. Yes, sir.

The Master: Let me see the subpoena, will you? As I read this subpoena, you required the Gulf Refining Company to produce certain contracts with certain specified companies, not all the companies.

27375

Mr. Chambers: No—I didn't know any others; I specified all we knew.

Q. I show you a contract dated June 1, 1910, between the Gulf Refining Company, a corporation existing under the laws of Texas, and the Public Service Gas Company, a corporation under the laws of New Jersey, which is an original contract produced by you?

Mr. Ransom: I object to the question and ask leave to examine the witness briefly for the purpose of framing my objection more particularly.

The Master: I don't know what the question is.

Q. That is a contract from your files?

Mr. Ransom: I object to the question and ask leave to interrogate the witness before he answers it, for the purpose of framing my objection.

The Master: No, I will let the witness answer that question. Is that an original paper from your files?

The Witness: I cannot say. These papers were simply delivered into my hands by Mr. Lyon to

27377 deliver to this Court.

The Master: Let me see it. Did you get the witness's answer, Mr. Chambers?

Mr. Chambers: Yes.

The Master: Who was the paper served on?

The Witness: Mr. Lyon.

The Master: Tell him to be here at two o'clock. He has got to be here himself. Step down.

Mr. Chambers: I now ask to have this contract marked for identification.

Mr. Ransom: I object to the marking of these documents for identification. They have not been in anyway identified, they have not been produced

27378 by any qualified or competent person.

The Master: I will sustain the objection at this time. That man will be here at two o'clock, and you will probably get what you want then.

Mr. Chambers: I would like to have Mr. Pearson back.

The Master: Mr. Pearson has gone.

Mr. Chambers: I ask that all the contracts produced by the witness be marked for identification.

The Master: Same ruling.

27379

Mr. Chambers: Exception. I now offer in evidence a contract bearing date January 19, 1914, between the Standard Oil Company of New York—

Mr. Ransom: I object to the description of the document. There isn't any such document before the Court by any competent proof.

The Master: Proceed, Mr. Chambers.

Mr. Chambers: And the Kings County Lighting Company of Brooklyn, N. Y., on file with the Public Service Commission, First District, which was filed with that Commission, as appears by the stamp, December 29, 1915. If he makes 27380
the point I will have to call somebody from the Public Service Commission.

Mr. Ransom: Here appears to be a letter written by some person to an assistant counsel of the Commission transmitting with this letter what is said to be a copy of some contract. There isn't any proof before this Court that there ever was any such contract, that any such contract was entered into, that any oil was ever bought under it. The contract is wholly incompetent and immaterial, and the attempted mode of proof of the contract is highly incompetent.

The Master: I haven't heard what you want to 27381
say yet. Do you object to it?

Mr. Ransom: I do object to it.

Mr. Chambers: Do you object on the ground that I have not proved that it was filed with the Public Service Commission?

Mr. Ransom: There is nothing upon the paper which indicates that it is a document filed with the Commission. The endorsement on the paper indicates that it was an exhibit in some case before the Commission. The paper does not con-

27382 Ely Neumann, Direct.

tain the filing mark, the common form of filing mark on documents filed with the Commission. All the paper indicates is that it was an exhibit before the Commission. It does not indicate, contrary to counsel's statement, that it was filed with the Commission.

Mr. Chambers: I will call Mr. Neumann.

ELY NEUMANN, called as a witness in behalf of the
27383 defendants and being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Where are you employed?

A. With the Public Service Commission of the First District, State of New York, 49 Lafayette Street, as assistant counsel.

Q. And you are employed there now as assistant counsel?

A. Yes, sir.

By Mr. Ransom:

Q. How long?

A. Since the 1st of September, 1919.

27384 By Mr. Chambers:

Q. Have you access to the records of the Commission?

A. I have, records and files of the Commission.

Q. And you are able to tell what papers are in the records and filed, are you not?

Mr. Ransom: I object to the question. It is highly absurd. Under the Public Service law the custody of the records is in a definite place, and the idea that an assistant counsel who has been there—I will not say temporarily—but at least only for a very short time may come in and testify about the Commission's files—

Mr. Chambers: You are mistaken as to what it calls for. Will you concede that you are mistaken once in a while?

Q. Now, Mr. Neumann, this paper I show you, copy of an agreement dated January 19, 1914, between the Standard Oil Company and the Kings County Lighting Company, which I hold in my hand, will you please state how that came into your possession, where you got it?

A. That came with the rest of the—

Mr. Ransom: I object to the question as immaterial and incompetent. What has that got to 27386
do with the issues in this action. How is that binding on this complainant?

The Master: I don't know yet. Objection overruled.

Mr. Ransom: Exception.

A. This paper came with the rest of the file you are holding in your hand, obtained by me from the files of our Commission and brought here to court.

Q. That includes—

A. All of the papers which you now hold in your hand.

Mr. Chambers: It includes copy of contract between the Gulf Refining Company and the Kings 27387
County Lighting Company dated July 7, 1905.

Agreement between the Gulf Refining Company and the Kings County Lighting Company dated October 5, 1906.

Contract between the Texas Company and the Kings County Lighting Company dated October 18, 1907.

Agreement between the Standard Oil Company and the Kings County Lighting Company dated March 16, 1910.

27388

Agreement between the Standard Oil Company and the Kings County Lighting Company dated September 5, 1912.

Agreement between the Standard Oil Company and the Kings County Lighting Company dated January 19, 1914.

Agreement between the Standard Oil Company and the Bronx Gas & Electric Company dated July 23, 1908.

Agreement between the Standard Oil Company and the Bronx Gas & Electric Company, dated November 8, 1911.

27389

Agreement between the Bronx Gas & Electric Company, Westchester, and the Standard Oil Company, dated September 10, 1914.

Agreement between the Brooklyn Borough Gas Company and the Standard Oil Company, dated June 17, 1914.

Agreement between the Standard Oil Company of New York and the Brooklyn Borough Gas Company, Coney Island, dated October 1, 1915.

Agreement between the Standard Oil Company and the New York & Richmond Gas Company, Stapleton, Staten Island, dated May 24, 1906.

Agreement between the Gulf Refining Company of Port Arthur, Texas, and the New York & Richmond Gas Company, Staten Island, dated May 24, 1907.

27390

Agreement between the Gulf Refining Company of Texas, and the New York & Richmond Gas Company, Staten Island, dated March 16, 1908.

Agreement between the Standard Oil Company of New York and the New York & Richmond Gas Company, Staten Island, dated October 3, 1908.

Agreement between the Standard Oil Company of New York and the New York & Richmond Gas Company, Staten Island, dated February 7, 1911.

27391

Agreement between the Standard Oil Company of New York and the New York & Richmond Gas Company, Staten Island, dated December 30, 1912.

Agreement between the Gulf Refining Company and the New York & Richmond Gas Company, Staten Island, dated June 9, 1914.

Agreement between the Gulf Refining Company and the New York & Richmond Gas Company, Staten Island, dated July 1, 1914.

Contract between the Gulf Refining Company and the Queens Borough Gas & Electric Company, Rockaway Beach, dated December 5, 1904. 27392

Contract between the Standard Oil Company of New York and the Queens Borough Gas & Electric Company, dated April 5, 1907.

Contract between the Gulf Refining Company of Port Arthur, Texas, and the Queens Borough Gas & Electric Company, dated March 30, 1908.

Contract between the Standard Oil Company and the Queens Borough Gas & Electric Company, or rather a letter dated April 21, 1909, together with an agreement between the Queens Borough Gas & Electric Company of Far Rockaway, and the Standard Oil Company of New York, dated April 6, 1909. 27393

A letter bearing date November 16, 1911, between the Standard Oil Company of New York and the president of the Queens Borough Gas & Electric Company, and the agreement accompanying the same, bearing date November 15, 1911.

An agreement between the Standard Oil Company of New York and the Queens Borough Gas & Electric Company of Far Rockaway, bearing date April 30, 1914.

Letter from the auditor of the Queens Borough Gas & Electric Company to the president of

27394 the Queens Borough Gas & Electric Company, dated December 31, 1915.

Contract between the Standard Oil Company of New York and the assistant treasurer of the New York Mutual Gas Light Company, dated June 24, 1904.

Also a letter dated June 24, 1904, between the same parties.

Another letter dated June 27, 1904, between the same parties.

Letter dated July 1, 1907, in the nature of a memorandum of agreement between the Standard
27395 Oil Company and the New York Mutual Gas Light Company, dated July 1, 1907.

Agreement between the Standard Oil Company of New York and the New York Mutual Gas Light Company dated January 1, 1911.

Letter between the New York Mutual Gas Light Company and the Standard Oil Company, dated November 29, 1911, in the nature of an agreement.

Letter between Higgins of the Standard Oil Company, and the president of the New York Mutual Gas Light Company, dated December 1, 1911.

27396 Letter between the New York Mutual Gas Light Company and the Standard Oil Company dated November 27, 1912.

Letter between Higgins of the Standard Oil Company of New York, and the president of the New York Mutual Gas Light Company, dated November 29, 1912.

Letter between the president of the New York Mutual Gas Light Company and Higgins, as manager of the Standard Oil Company, dated December 2, 1912.

27397

Agreement between the Standard Oil Company of New York and the New York Mutual Gas Light Company, dated May 21, 1913.

Agreement between the Standard Oil Company of New York and the New York Mutual Gas Light Company, dated June 30, 1914.

Photostatic copy of a letter bearing date July 8, 1904, between Howe, assistant treasurer of the Standard Oil Company of New York and the president of the Brooklyn Union Gas Company.

Photostatic copy of a letter in the nature of an agreement between the Standard Oil Company of New York, through Higgins, manager, and the Brooklyn Union Gas Company, dated November 1, 1906. 27398

Photostatic copy of an agreement between the Standard Oil Company of New York and the Brooklyn Union Gas Company dated January 1, 1911.

Photostatic copy of an agreement between the Standard Oil Company and the Brooklyn Union Gas Company, dated January 1, 1912.

Photostatic copy of an agreement between the Standard Oil Company of New York and the Brooklyn Union Gas Company, dated November 22, 1912.

27399

Photostatic copy of an agreement between the Standard Oil Company of New York and the Brooklyn Union Gas Company, dated June 10, 1913.

Photostatic copy of an agreement between the Standard Oil Company of New York and the Brooklyn Union Gas Company, dated June 30, 1914.

Letter bearing date January 6, 1916, from Cullen & Dykman, to Mr. Hine, of the Public Service Commission.

27400 Photostatic copy of an agreement between the Standard Oil Company of New York and the New York & Queens Gas Company of Flushing, Long Island, bearing date March 3, 1905.

Photostatic copy of an agreement between the Standard Oil Company of New York and the New York & Queens Gas Company, dated April 1, 1907.

Photostatic copy of an agreement between the Standard Oil Company of New York and the New York & Queens Gas Company, dated September 25, 1908, attached to which is a letter
27401 dated October 6, 1908 from Higgins, of the Standard Oil Company, to Snyder, vice president of the New York & Queens Gas Company?

Letter from Higgins of the Standard Oil Company to Spear, manager of the New York & Queens Gas Company, dated February 7, 1913.

A letter bearing date May 8, 1913, from the president of the New York & Queens Gas Company to the 2nd vice president of the Sun Company of Philadelphia.

Mr. Ransom: I have not wanted to interrupt Mr. Chambers' reading of these documents, but his characterization of them of course is entirely
27402 without support in the record. These are not agreements, they are not originals, they are not papers, signed by anybody, they are mere copies of documents wholly unproved, which bear no file number of the Commission, but merely a mark as an exhibit, whether on behalf of the company or of the Commission I do not know, in an investigation held before the Commissioner in 1916.

The Master: Mr. Neumann will be able to tell us whether that statement is correct. Are all of these papers that Mr. Chambers has enumerated papers which were offered in evidence in an investigation made in 1916 by the Commission?

27403

The Witness: They are. They are all the papers that were taken from File No. 823, if I recall correctly.

The Master: That was an investigation?

The Witness: That was an investigation as to the prices of gas oil.

Mr. Ransom: That was a case before the Commission. I am told that the file number is 651 instead of 823.

The Witness: That may be the particular case, but they were all produced from File No. 823. That is where I found them, in that file number.

27404

Mr. Ransom: That is where the papers in that case were filed?

The Witness: There may have been several cases consolidated and all the papers put in that one file, but the file from which these are produced, if I recall rightly, is 823.

Mr. Ransom: And this C. S. Allen reported, who signed this, is the reporter who took the minutes of the hearing before the Commission?

The Witness: That I do not know.

The Master: Judge Ransom, somewhere or somehow, I know if I were presenting this case for the defendants I would get all that in.

27405

Mr. Chambers: I will get it in, he need not worry.

The Master: I have no doubt Mr. Chambers will get it in.

Mr. Chambers: He can rest assured that that will be so.

The Master: It is undoubtedly the fact that the Gulf Refining Company, and the Texas Company, and the Tidewater Company, and the other companies did sell gas oil to various other companies around New York on various terms, at various times and at various prices. I think that is a

27406

matter that has got to come out. Why not expedite it and get it out?

Mr. Ransom: When the matter came up during Mr. Addick's cross-examination I endeavored to show the contract prices for the entire period down to the eight months of 1919, from 1904 or '5 down to that time. I offered to show those things from the annual report of the different companies to the Commission. That was objected to by Mr. Chambers. I wanted to show what is true, that on the average over this period this company paid less than the other companies

27407 in this district.

The Master: Does that show from these contracts?

Mr. Ransom: He is only taking a part of the period.

The Master: Are you willing to take all the contracts on file with the Commission for the entire period?

Mr. Ransom: The difficulty is this, none of these oil contracts, as far as I know—and I think I speak with knowledge—have ever been filed with the Commission. In 1916 there was a hearing presided over mostly by Mr. Commissioner

27408 Hayward, which inquired into the prices of gas oil. On that hearing there were put in evidence these documents which have been here referred to. They are all, or some of the contracts down to 1915, as I recall it. Since that time of course all of these companies have had contracts running down to the present time.

The Master: Where did you get the data, or what data did you intend to offer to show that your average was lower than the others?

Mr. Ransom: Each company reports to the Commission in its annual report, under the Com-

27409

mission's requirements, from whom it buys, what the terms of the contract are, what the price is, the quantities and so on. That was available at that time, covering the period from 1904 down to the end of August, 1919.

The Master: Well, it is available yet, isn't it?

Mr. Ransom: It would be available now, or within a very few days, covering the whole of 1919.

Mr. Hayward: They have only done that since 1916.

Mr. Chambers: Were you counsel to the Commission when this was going on? 27410

Mr. Ransom: I was not.

Mr. Hayward: I think I am right in saying that that was done only since 1916.

The Master: I am going to get into this record if I can in orderly fashion all of the contracts made with all of the companies, and all the prices paid for the last six or eight or ten years.

Mr. Ransom: I have here in my hand—

Mr. Chambers: You are not going to get it through me.

The Master: Then you don't want the truth to come out. 27411

Mr. Chambers: Yes, I do.

The Master: The way to get the truth is to get it all.

Mr. Chambers: I will offer what I think will show the truth.

Mr. Ransom: In response to Colonel Hayward's question, just asked, I have here the reference to the volumes and pages of the annual reports of the Commission, the reports they made under authority of law. In other words, the

27412

Commission having first required this company and all these companies to file with them information regarding their contracts year by year, the Commission checks up on that and then summarize it in its annual report. For example, in the 1907 report you will find it on page 590, Table 20; in the 1909 report it will be found on page 1401, and so on year by year from the beginning of this Commission down to the present time. That data has in the first place been collected by the Commission, and in the second place analyzed and checked by the Commission, and

27413 in the third place published by the Commission.

The Master: I don't know what you are arguing about now. Next question.

Mr. Chambers: I understand that these are all the contracts during the period covered.

Mr. Ransom: I am standing on my objection, the fact that there is no evidence before this court, that there isn't any such agreement as those of which Mr. Chambers had read a list of the copies, no such copies themselves are a part of the record in the Commission's files except insofar as copies appear by some acquiescence of counsel to have been put in as exhibits

27414 in a particular case before the Commission. That is not a competent method of proving any facts material to this case.

The Master: Before I rule on that I am going to get the attitude of counsel in this case. As I understand it, Mr. Chambers says there are all the contracts down to 1916.

Mr. Chambers: Except the Consolidated.

Mr. Ransom: They are in evidence.

The Master: In other words, they are precisely the things that Judge Ransom says appear in these annual reports. Isn't that right?

27415

Mr. Chambers: I think that is substantially right.

Mr. Ransom: We have not said that at all.

The Master: What can the difference be?

Mr. Ransom: I don't know what these documents are that they have produced.

The Master: Well, you are willing to take the Commission's record for those years?

Mr. Ransom: I am willing to take it for all of the years. I am not willing to waive objection unless they cover the whole period.

The Master: What I am trying to get at—

Mr. Chambers: I don't want him to waive 27416
anything.

The Master: Are you willing to take the Commission's records for these years as indicating the contracts made and the prices paid for oil?

Mr. Ransom: Only on the basis of covering the entire period.

The Master: For the period down to 1916, assuming the other objection you make is met, are you willing to take the Public Service Commission's statement?

Mr. Ransom: I am not.

The Master: Why not?

Mr. Ransom: Because it is fragmentary and 27417
incomplete.

The Master: In what respect?

Mr. Ransom: Because these things by themselves have no bearing upon any issue in this case.

The Master: No, I am assuming that I take the whole period. You have said that you are willing to use the Public Service Commission's annual report as giving the data, haven't you?

Mr. Ransom: For the entire period.

27418

The Master: For the entire period—am I right about that?

Mr. Ransom: Yes.

The Master: The greater includes the lesser, is that right?

Mr. Ransom: Not here. We will not waive the objection as to part of the period.

The Master: No, but you are willing to take the Public Service Commission's record as showing the contracts made and the prices paid for oil during the entire period, is that correct?

Mr. Ransom: What do you mean by the Pub-
27419 lic Service Commission records? Do you mean the reports of the respective companies regarding the cost of their gas oil and their contracts, that data being first shown in the annual reports of the respective companies to the Commission and then shown in the reports of the Commission?

Mr. Chambers: I think perhaps we had better prove them one by one.

The Master: That is going to take too long.

Mr. Chambers: I am sorry, but I think that is the best proof.

The Master: I am trying to find out if we cannot get the truth of this situation without
27420 spending a month on it.

Mr. Ransom: You can prove this whole thing in fifteen minutes if they are willing.

The Master: How?

Mr. Ransom: By taking the Commission's reports on the cost of gas oil to the respective companies as shown by the Commission's report from 1907 down to the annual report for 1918, with the serial reports, and the annual report which will shortly be made up as of 1919.

The Master: Mr. Chambers, is there any dif-

ference between those tabulated reports of the Public Service Commission and these contracts? 27421

Mr. Chambers: Yes, the Public Service Commission's information is not so full and complete.

Mr. O'Brien: Judge Ransom was counsel for the Commission at the time.

The Master: That is terrible.

Mr. Ransom: I was not at the time of the investigation. Mr. Coleman was counsel when this investigation was made.

Mr. O'Brien: I am talking about part of the period covered by the tabulation. 27422

The Master: That is very bad.

Mr. Chambers: The only point I can think of, if he would not raise the question that I do not produce the original contract—I do not ask him to waive anything—I could offer these and would not have to prove the originals. I don't want him to waive anything, and I am willing to subpoena every company and every oil company, if necessary, to prove these contracts, because they form the basis of a very important piece of evidence. I have to lay the foundation for something that is coming hereafter. I do not mind telling you, a table of some kind. 27423

The Master: As I recall it, Mr. Maltbie had in his hand a blueprint tabulation showing the cost of oil from year to year some time ago, didn't he?

Mr. Ransom: Down to 1915.

The Master: Doesn't that correctly set forth all of these contracts?

Mr. Chambers: That paper?

The Master: Yes.

27424

Mr. Chambers: That will not give the details. What is in there is correct, but it does not give all the details as to quality, etc.

The Master: It gives the price of the oil.

Mr. Chambers: Counsel always raises some question that this oil was not of the quality that they needed, so the contracts will prove the quality.

The Witness: And the tests.

Mr. Chambers: I want to show the Court by the original contracts just what kind of oil they were buying, what prices they were paying for

27425 it. I was going to make it easy afterwards by presenting a table.

The Master: We have got to get that in some way.

Mr. Ransom: These reports show the gas oil used by each company in each year in gallons: they show the amount paid by each company for gas oil in dollars from 1907 to the present time: they show the average prices per gallon paid for gas oil by each of the companies in those years, and they show—

The Master: Suppose that oil in some of these cases is much inferior to the oil that you bought:

27426 it would make a difference, would it not?

Mr. Ransom: That, of course, would be against us.

The Master: How would it be against you?

Mr. Ransom: Well, my recollection is that the reports of the Commission show—the reports of the companies to the Commission are required to show that information about these contracts, and that information is likewise tabulated by the Commission. For instance, if here we have oil of a certain gravity Baume, that is shown. It is certainly tabulated in the 1916 investigation.

27427

Mr. Chambers: No.

Mr. Neumann: I think you are mistaken about what the reports show.

The Master: I have made up my mind, so far as I can, adhering to the rules of evidence, that I will go into this matter of the prices paid by all the companies for oil since 1907, as bearing on your statement that your price averages less than all of them put together. If that is so, you should have it in here.

Mr. Ransom: I have tried to prove it.

The Master: If it is not so the defendants ought to have it in this case. If it is not lower 27428
than the average of all the other companies it ought to be in this record.

Mr. Ransom: I tried to prove it by what I then regarded and regard now as a competent method. I believe that beyond peradventure, as against these defendants, the Commission report following the investigation into this subject, showing year by year the number of gallons each company bought, the amount in dollars that they paid for it, the price in cents per gallon that they paid, and from that on the basis of the Commission report to the legislature and to the public, on which the business interests of this 27429
community—

The Master: My mind is clear on what I have just said; it is likewise clear that I am not going to take part of the contracts or part of the prices paid. You gentlemen might just as well understand it and see if you cannot facilitate and expedite this trial. I am going to take it all. I am going to have on record the fact as to what all the other companies paid for oil, and whether this company was paying more or less than the other companies.

27430

Mr. Hayward: For what territory? Do you include Newark?

The Master: In and around New York. I will take Newark as part of New York Harbor.

Mr. Ransom: Of course my statement as to this period, that the company's cost of oil is less than that of the other companies, relates only to the companies within the City of New York.

The Master: We will see what it shows.

Mr. O'Brien: Never mind quibbling over it. If you want the record of the Public Service Commission in here now, why are you objecting

27431 to the report on which the original data was based?

The Master: Why are you addressing Judge Ransom now?

Mr. O'Brien: I am addressing the Court, your Honor.

The Master: Well, stop it.

Mr. O'Brien: I wish you would stop Mr. Ransom, then.

The Master: Is there any objection to getting this data in this form?

Mr. Hayward: No, Judge Ransom can have it done in an hour any time he will meet us half

27432 way; but I want to say that there is a possible difference between the harbors of Boston and Philadelphia that should be taken into account, if there is a difference, and I do not know which way it would be, as to the oil field, and I think that would throw a light on this case.

The Master: I might take that in another form—have a man of the Texas Oil Company or the Gulf Refining Company say that is so, but I will not assume it. I want some proof on it. I will take the proof of a man like the selling agent of the Gulf Refining Company, say-

27433

ing that prices down in Philadelphia or some place else are the same as obtain here—or in Newark—or freighting it, or carrying it up through Newark Bay, would make a difference. I will take that.

Mr. Hayward: You do not want to confine us to New York City.

The Master: Not necessarily. I am going to take any proof that bears on this situation, but I have got to get it in what I conceive to be a proper form. I do not think that as to all of the companies over which this Public Service Commission has jurisdiction it ought to be easy 27434
to get it in, in one form, quickly and without wasting much time.

I think, as I have said, the public must have and I must have, in order to determine this issue as to whether or not the Consolidated Gas Company has paid a proper price for gas oil, what other companies were able to get the oil for, and the explanation, if any there be, as to how they got it cheaper than your company did. I am not going to let the defendants, however, pick out a few contracts which indicate that some people got it for less, when that would throw the burden 27435
on the complainant of showing that some people got it for more.

I will let defendants show that the companies in and about New York paid various prices—different companies. If that bears out the complainant's claim that they got it for less than the average of all these companies, that is good for the Consolidated Gas Company; if not, I want to know why the Consolidated paid more than the average of the other companies.

27436

Mr. Ransom: I had in court here the other day each of the bound volumes of the reports of the Commission, summarizing these statistics, which I have indicated with the references; and I also had a tabulation and offered, as your Honor will recall, the tabulation and the report covering the entire period, and you would not receive it.

Mr. O'Brien: Well, it was on another ground.

The Master: I cannot receive it now unless there is a stipulation.

Mr. O'Brien: Your Honor ruled that out because it was not rebuttal.

27437

Mr. Ransom: No, it was not.

Mr. O'Brien: It was not re-direct.

The Master: I cannot take the Commission's reports as proof of the facts. I am not bound by them and I do not think it is proper. If counsel intend to co-operate and get the facts on the record in the shortest possible time that those reports can be taken, it will be on the basis of a stipulation. If I cannot have that I must take it another way.

Mr. Ransom: The offer stands open for the period.

27438

Mr. Hayward: I want to know if the Judge is going to insist that we bring down the secretary of the Commission, Mr. Walker, in addition to what Mr. Neumann has testified to?

The Master: No, there is not any necessity for that. I am going to take Mr. Neumann's testimony that these papers were offered in evidence as part of the investigation of the Commission and were received by the Commission.

Mr. Chambers: They are filed papers.

The Master: No, they are not filed papers.

Mr. Chambers: Then I want to bring the secretary here.

Mr. Ransom: There is no order for their filing.

The Master: They were not papers like the annual report, that are required to be filed.

Mr. Ransom: Or the franchises.

The Master: Or the franchises or anything of that sort. Apparently the fact is that the Public Service Commission conducted an inquiry in 1916 as to the price paid for oil and, in the course of that inquiry, they called on various companies to give them copies of their contracts and they were offered in evidence. I do not think 27440
you will get anything more from Mr. Walker, and, that being the fact, I shall rule that they are not proof for the purposes of this trial. But you get them some other way; you are bound to get them.

Mr. Chambers: Yes.

The Master: That is what I am trying to explain to Judge Ransom, and I think a little cooperation will save us a lot of trouble. Unless Judge Ransom will get the District Court to take away from us the power of subpoena.

The Master: If there is any question about 27441
subpoenas I will attend to it.

Mr. Chambers: That is all. Your witness, Judge Ransom.

CROSS-EXAMINATION BY MR. RANSOM:

Q. You are not connected with the secretary's office?

A. No, sir.

Q. You have not the custody of papers?

A. No, sir.

Mr. Ransom: That is all.

Mr. Chambers: I suggest that we adjourn for recess.

Recess.

27442

Afternoon session.

Mr. Ransom: On the matter we were discussing just before recess, as to these contracts and some way of meeting your Honor's view that contracts for these other companies within New York City for gas oil should be brought into this record, the complainant does not believe that that is probative or competent upon the issue which is here presented. However, in view of what your Honor has said, as a matter of simplifying the method of proof, it occurs to me to suggest this: If the Commission, in pursuance of
27443 the power under which it obtained what purport to be copies of contracts down to 1916, will now, in the exercise of that power, obtain copies of the contracts to date, the complainant will not contest the competency of the offer of those contracts as a whole. That is, the fact that copies are produced instead of originals, subject, of course, to our view as to the materiality and relevancy. I am willing that if they will obtain copies of all the oil contracts of all companies in the city down to date, that they may be offered, subject to our objection as to the materiality and relevancy.

27444 Mr. Hayward: May I ask a simple question? Do you think they have the right, in the absence of an investigation, to go out and call these contracts in? If there had been no investigation started by the Commission and no hearing held?

Mr. Ransom: I am not now counsel to the Commission.

Mr. Hayward: Well, as counsel of the Commission, I ask your recollection. I doubt if they have.

Mr. Ransom: The Commission has very broad powers to require filing of data, and of course they are requiring this information to be furnished through the annual reports.

The Master: Go ahead, Mr Chambers.

WILSON W. THOMPSON, recalled:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Now, have you invested yourself with the contracts in question called for by the subpoena directed to the Brooklyn Borough Gas Company, Mr. Thompson?

A. I have.

Q. Refreshing your recollection from those contracts, when does the first one begin, and who was it with?

27446 Mr. Ransom: I object to the question, incompetent, immaterial, it does not appear that this member of the bar has any knowledge of the contracts of the company, his knowledge would be purely hearsay and wholly incompetent, he is not a qualified witness to testify as to anything with respect to the oil contracts of this company.

Mr. Chambers: In fairness to the Master I desire to say that these particular contracts are missing in the files of the Public Service Commission. They should be there, but they are not, hence I am going out and getting them from this source.

27447 The Master: I will let you get them. Mr. Thompson, what papers have you got here that you brought into court?

The Witness: I have what purport to be the contracts of the Brooklyn Borough Gas Company from 1904 to 1913, oil contracts. They came to me in this envelope, with a little note which states that the contracts for the years 1904, 1905 and 1906, are missing, but with that exception they are apparently all here.

The Master: Just read them off, just what you have got.

27448 Wilson W. Thompson, Direct.

Q. The dates of them, and between what companies?

Mr. Ransom: I object to it as incompetent and immaterial, the witness not qualified to testify, the papers speak for themselves.

The Master: I am not letting him testify to anything except what has been handed him by somebody in the company to bring here at this time.

Mr. Ransom: He has not even stated "handed to him to bring here."

27449 The Master: Well, he has got them These are the papers that somebody in the Brooklyn Borough Gas Company's office say they have got which would answer the description of papers called for in the subpoena.

Q. Well, you did get them from Miss Dillon, didn't you, Mr. Thompson?

A. Yes, sir. The first one is dated July 23, 1906, between the Standard Oil Company of New York and Brooklyn Borough Gas Company; the second one is dated July 29, 1907, between the same parties; the next one is dated July 10, 1908, between the same parties, and the fourth one is dated January 19, 1910,

27450 between the same parties.

Q. Now, may I take these?

Mr. Chambers: I ask that they be marked for identification.

Mr. Ransom: Objected to as incompetent, immaterial.

The Master: Motion denied.

Mr. Chambers: I offer them in evidence. No, excuse me. I have to prove the signature.

Q. Whose signature is on the Standard Oil?

A. I do not know.

Q. I mean whose name, without whether it is authentic or not?

Mr. Ransom: I object to it.

A. Having looked at it, I cannot tell.

Mr. Ransom: Which only emphasizes this anomalous method of proof, of bringing a series of lawyers here.

Mr. Chambers: Most anomalous, we are only taking up your time, delaying your judgment, I suppose, and annoying you. You would shut off our defense entirely, wouldn't you?

Mr. Ransom: No, I would declare your proof incompetent.

The Witness: It is a signature I cannot de- 27452
cipher.

Q. Who signed for the Brooklyn Borough Gas Company, Mr. Thompson?

Mr. Ransom: Objected to as incompetent and immaterial; the papers speak for themselves.

The Master: I will allow it.

A. I do not know who signed it. There is a name on here.

Q. What is the name?

A. J. J. Humphreys. I am not familiar with the signature; I do not know the gentleman.

Q. The next one, what name? Isn't one of them Higgins, for the Standard Oil?

27453

A. Well, it may be Higgins and it may be any other name in the telephone directory.

Q. Are they all alike?

A. They are apparently all alike.

Q. All of them, I mean both the Standard and the Brooklyn Borough Gas Company?

A. Yes.

Q. They are all?

A. Apparently the same signatures on all four for both the Standard Oil Company and the Gas Company.

27454 Wilson W. Thompson, Direct.

Q. Were they offered in evidence in the Brooklyn Borough case?

Mr. Ransom: I object.

A. They were not.

Mr. Chambers: I ask that these remain in the custody of the Court until I call Mr. Higgins.

The Master: No.

Mr. Chambers: I ask that they be marked for identification.

Mr. Ransom: Objected to.

The Master: Denied.

27455 Mr. Chambers: Exception to both rulings. Now I ask that Mr. Thompson keep them until I can subpoena him again and have them brought here in court while I call Mr. Higgins.

The Master: Mr. Thompson has heard your request. I will make no direction on it.

Mr. Chambers: Well, will you just keep them in your office, Mr. Thompson, until I can subpoena you again, and Mr. Higgins?

The Witness: I cannot tell what will happen when I leave court, but probably they will be in my office.

Mr. Chambers: Your witness.

27456 Mr. Ransom: No cross-examination.

E. A. LYON, called as a witness, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Where do you reside?

A. Plainfield, New Jersey.

Q. And you are employed by what company?

A. Gulf Refining Company.

Q. And did you come here pursuant to a request this afternoon?

A. Yes, sir.

The Master: This is the gentleman a subpoena was served on? 27458

Q. A subpoena was served on you?

A. Yes, sir.

Q. Now, have you in your possession certain contracts between the Gulf Refining Company and other companies, the Public Service Commission of New Jersey and the United—

A. No.

Q. Gas Improvement Company?

A. Yes, and the Boston Consolidated.

Q. I show you a paper and ask you if you recognize the signature at the bottom of that, J. W. Williams?

A. I do. 27459

Q. Who is J. W. Williams?

A. He is our General Manager.

Q. Of the Gulf Refining Company?

A. Yes, sir.

Q. And that is his signature?

A. That is his signature.

Q. Do you recognize the other signature at all?

A. Yes, sir.

Q. Whose signature is that?

A. J. A. Pearson.

Mr. Chambers: I offer this paper, which is an agreement bearing date September 23, 1919, be-

27460 E. A. Lyon, Cross.

tween the Gulf Refining Company of Port Arthur, Texas, and the Equitable Illuminating Gas Light Company of Philadelphia.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Have you ever seen Mr. Pearson write?

A. No, I cannot say that I have.

Q. Have you ever talked with Mr. Pearson about his signature?

A. No.

Mr. Ransom: I object to this as incompetent, immaterial and irrelevant, no bearing upon any
27461 issue of this case, not pertaining to the inquiry here, which is the reasonableness of the price at which oil of the Consolidated Gas Company was sold to the Consolidated Gas Company or could have been procured by the Consolidated Gas Company under the conditions of delivery, storage, quality, candle power and the like which obtain in this state; that a contract, if this be such, made between the Gulf Refining Company and a company in Philadelphia is not a proper method of proving either the market price of gas oil for delivery in this district, or the reasonableness of the price paid by the Consolidated or that the
27462 price which the Consolidated paid for the kind of gas oil which it procured under the delivery conditions here obtaining and under the candle power requirements imposed in this state, was at all excessive. It has no bearing upon any issue in the case. The fact that such a contract was entered into, if one was, between these two parties, is no index of what a New York City company should obtain, and it does not relate to the same kind of oil.

The Master: You have in mind the line of testimony that I have indicated I would receive, have you, Mr. Chambers?

Mr. Chambers: Yes. I would like to ask Mr. Lyon another question or two.

DIRECT-EXAMINATION RESUMED BY MR. CHAMBERS:

Q. Why do you say that is the signature of Mr. Pearson?

A. Well, I have had a good deal of correspondence with him.

Q. Had letters from him?

A. Had letters from him, yes. 27464

Q. And have you discussed with him letters that he has written to you?

A. Well, yes, I can say yes to that.

Q. Letters wherein he acknowledges—letters written to your company or to you, that he acknowledged that he had written, with his signature?

A. Yes, sir.

RE-CROSS EXAMINATION BY MR. RANSOM:

Q. Have you made the contracts with the Equitable?

A. No, sir.

Q. Had anything to do with them?

A. No, sir. 27465

Q. You did not sign them?

A. No.

Q. And did not draw them?

A. No.

Q. And were not present when they were signed?

A. No, sir.

Q. Did not see Mr. Pearson sign them?

A. No sir.

Q. Did not see Mr.—

Mr. Chambers: I will have to call Mr. Pearson on his signature, if necessary.

The Master: I do not think I will take this method of proof. I will let you ask Mr. Lyon what the price was of oil at this time, and what they were selling it for, and what their capacity was for delivering it to the Consolidated Company if they had gotten the contract.

Mr. Chambers: I ask this to be marked for identification.

Mr. Ransom: I object to this even being
27467 marked for identification.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. Do you know Mr. Pearson's first name?

A. James, I think.

The Master: I will let you ask Mr. Lyon what the market price was and what he was prepared to sell the merchandise for, and any questions of that kind, but I do not think that proof that he made a contract with the Equitable of Philadelphia for a price indicates what he could have sold it or would have sold it for to other people.

Mr. Chambers: I will take an exception. I ask that that be marked for identification.

27468 Mr. Ransom: Objected to, under your Honor's previous ruling that this document is not even entitled to be marked for identification.

The Master: Objection sustained.

Mr. Chambers: Exception. The paper that I asked to have marked for identification is an agreement dated the 23rd day of September, 1919, between the Gulf Refining Company of Port Arthur, Texas, and the Equitable Illuminating Gas Light Company of Philadelphia.

The Master: That is sufficient description.

Mr. Chambers: With the signatures of J. W. Williams, general manager of the Gulf Refining Company and J. W. Pearson, I guess it is, purchasing agent of the Equitable Illuminating Gas Light Company of Philadelphia.

Q. I show you another paper, Mr. Lyon, and ask you to look at that and tell me whose signature is at the bottom of it, and please do not let counsel see what is in it.

Mr. Ransom: Well, if he knows.

Mr. Chambers: I ask that you not look at the contents of these papers. 27470

The Master: I think Mr. O'Brien, Mr. Ransom and Mr. Maltbie better take their seats.

Mr. Chambers: I don't care to have Judge Ransom see the prices in these contracts at this time.

The Master: What signatures are they?

A. G. R. Nutty and J. A. Pearson.

The Master: Mr. Nutty representing whom?

The Witness: The Gulf Refining Company.

Q. That is his signature there?

A. That is his signature.

Mr. Ransom: I object to him stating it is the signature of Mr. Pearson. He apparently knows nothing about it. 27471

The Master: Objection overruled.

Q. And that is Mr. Pearson's signature, the same as the other?

A. Yes, sir.

Mr. Chambers: I now offer in evidence this agreement which is dated October 29, 1919, between the Gulf Refining Company of Port Arthur, Texas, and the Equitable Illuminating Gas Light Company of Philadelphia, for thirty million gallons of gas oil, containing the two signatures which Mr. Lyon has identified. Or

rather I ask that it be marked for identification.

Mr. Ransom: Objected to.

The Master: The application is denied.

Mr. Chambers: I now ask that it be marked in evidence.

Mr. Ransom: Objected to on the grounds hitherto indicated.

The Master: Objection sustained. I repeat I will let the counsel ask the witness what the market price was for his oil, as to his or any
27473 other company.

Q. I show you another paper—

The Master: For information of counsel, I will go further and say that in the light of the paper that you have, the information that you have, if Mr. Lyon gives a price in excess of that of the Philadelphia Company, I will let you examine him as an adverse witness.

Mr. Ransom: How is he adverse?

The Master: I don't know, but I will let counsel go very far.

Q. I might ask you, Mr. Lyon, what is your particular business with the Gulf Refining Company?

27474 A. I am district sales manager for the New York district, so-called.

The Master: That includes what, Mr. Lyon?

The Witness: That includes the northern part of New Jersey, part of New York, and the western half of Connecticut.

Q. You would know about these prices of oil, would you?

A. I cannot testify to that. I had nothing to do with the making of this particular contract.

By the Master:

Q. You do not know the prices with respect to Philadelphia?

A. No.

Q. You do not know anything about that?

A. No.

Q. You can tell us about the New York Harbor prices, and by New York Harbor I mean New York City, Queens and Newark?

A. Yes.

The Master: Probably he can give us some information that will be of value, if you care to ask him.

By Mr. Chambers:

Q. I show you two papers and ask you to look at them and tell me whose signatures you find upon them? 27476

Mr. Ransom: I object to the question until I have had an opportunity of interrogating him as to whether he has any basis for his knowledge.

The Master: Objection overruled.

Mr. Ransom: It is perfectly clear that he testified to Mr. Pearson's signature without knowing anything about it.

Mr. Chambers: I have no objection to counsel interrogating him about it.

The Master: The ruling stands.

Q. Do you recognize the signatures? Whose are they? 27477

A. G. R. Nutty and J. A. Pearson.

The Master: The same signatures as appear on the other paper?

The Witness: Yes, sir.

Q. The same men?

A. The same men.

Mr. Chambers: I now ask to have marked for identification the papers just identified by the witness, the first bearing date September 30, 1912, of the Equitable Illuminating Gas Light Company of Philadelphia, for twenty million gallons of gas oil—

27478 E. A. Lyon, Re-direct.

Mr. Ransom: I object to the description of the paper.

Mr. Chambers (continuing): The other of the Gulf Refining Company.

The Master: That is a sufficient description.

Mr. Chambers: I ask that they be marked for identification.

Mr. Ransom: Objected to on the grounds previously indicated.

The Master: Objection sustained. What is the date of that, Mr. Chambers?

27479 Mr. Chambers: The date of that is—one was September 30, 1912, and the other was the same date, September 30, 1912; being two cases, the second for 20,500,000 gallons of gas oil.

Q. Mr. Lyon, I now show you three papers and ask you whose signatures, if you know, do you find at the end of those three different papers?

Mr. Ransom: I object to the question.

The Master: Overruled.

Mr. Ransom: Exception. As to the signature of Mr. Pearson that appears on these papers, it affirmatively appears that the witness does not know and has not any knowledge of it.

27480 The Master: Objection overruled.

Mr. Ransom: Exception.

A. G. R. Nutty and J. A. Pearson.

Q. The same men that you heretofore described?

A. Yes, sir.

Mr. Chambers: I ask that they be marked for identification.

Mr. Ransom: Same objection as before.

The Master: You better describe the papers. Give the dates.

Mr. Chambers: Yes, the three papers identified by the witness. I was going to when counsel interrupted me. The three papers which the

27481

witness has just identified, the first bearing date September 24, 1914, between the Gulf Refining Company and the Equitable Illuminating Gas Light Company for 125,000,000 gallons of gas oil; another bearing date August 5, 1914, between the Gulf Refining Company and the Equitable Illuminating Gas Light Company of Philadelphia for 125,000,000 gallons of gas oil.

Mr. Ransom: I object to him stating part of the contents of these documents, with respect to what they are for.

The Master: I think you better just give the names of the parties and the dates; that is sufficient identification. 27482

Mr. Ransom: I move to strike out the evidence as to quantities.

Mr. Chambers: No, it is in.

Mr. Ransom: I move to strike out the description of gas oil.

Mr. Chambers: I object to it. I think it is part of the description.

The Master: No, I will ask counsel not to refer to the number of gallons again.

Mr. Chambers: Then I take exception to it.

The Master: But I will not strike out anything. 27483

Mr. Ransom: Nothing is said as to the period, and it is not competent.

Mr. Chambers: I respectfully except to the ruling of the Court. Are you going to talk, Judge, all the time I am talking?

Mr. Ransom: I have got to talk part of the time you are talking, or I would not be able to talk at all.

Mr. Chambers: I wish you rested a few minutes. I take exception to the refusal of the Court to allow me to fully describe these papers.

which I think includes the number of gallons of gas oil.

The third paper which the witness has identified in this last lot is a paper dated August 3, 1914, of the Equitable Illuminating Gas Light Company of Philadelphia and the Gulf Refining Company. I ask that these be marked for identificatioin for the present.

Mr. Ransom: Same objection.

The Master: Same ruling.

Q. Mr. Lyon: I show you another paper and ask
27485 you if you are able to say whose signatures you find upon that paper, on the last page?

Mr. Ransom: Objected to on the ground which has been previously stated.

The Master: If he knows, I will let him state.

Mr. Ransom: It appears affirmatively that he does not know.

The Master: I think it appears affirmatively he does know. He has had a lot of correspondence year after year with the Equitable Company and the signatures were the same, so I will take it.

Mr. Ransom: Exception.

A. G. R. Nutty and J. A. Pearson.

27486 Q. These are the same men?

A. Precisely.

Q. Whom you described heretofore?

A. Precisely.

Mr. Chambers: I now ask to have marked for identification this paper, the signatures to which the witness has identified at the present moment, which paper is dated October 21, 1913, between the Gulf Refining Company and the Equitable Illuminating Gas Light Company of Philadelphia, Pennsylvania.

The Master: Any objection, Judge Ransom?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Mr. Lyon, I now show you two more papers, and ask you if you are able to say after looking at same whose signatures you find thereon?

A. G. R. Nutty and J. A. Pearson.

Q. The same men whom you have heretofore described?

A. Apparently.

Mr. Chambers: I now ask to have marked for identification these two papers identified by Mr. Lyon, one dated June 3, 1910, between the Gulf Refining Company and the Public Service Corporation of New Jersey; the other paper referred to being dated June 1, 1910, between the Gulf Refining Company and the Public Service Corporation of New Jersey. 27488

The Master: Same objection, I assume, and same ruling.

Mr. Ransom: Same objection.

Mr. Chambers: Exception.

Q. Mr. Lyon, I show you another paper, and ask you after looking at it if you are able to say whose signatures you find at the end of the document, on the fourth page?

Mr. Ransom: Same objection. 27489

A. G. R. Nutty and J. A. Pearson.

Mr. Chambers: I now ask to have marked for identification this paper just identified by Mr. Lyon, dated May 25, 1913, between the Gulf Refining Company and the Public Service Gas Company of New Jersey.

The Master: Same objection and same ruling.

Mr. Chambers: Exception.

Q. I now show you two more papers, Mr. Lyon, and ask you if you will look at same and ask you if you are able to say after looking at them whose signatures you find at the bottom of the first paper

and at the bottom of the third page of the second paper?

Mr. Ransom: Same objection as before.

A. G. R. Nutty and J. A. Pearson to that (handing counsel paper).

The Master: I will take all these. Show him the next two.

Q. I hand you these two papers (handing witness).

A. The same.

Q. G. R. Nutty and J. A. Pearson?

27491 A. Yes, sir.

Mr. Chambers: This last is a little different.

The Master: Make your record on those that are the same first.

Mr. Chambers: I ask to have marked for identification the paper just now identified by the witness, dated August 3, 1914, between the Public Service Gas Company and the Gulf Refining Company, and the second paper dated August 5, 1914, between the Gulf Refining Company and the Public Service Gas Company.

The Master: Same ruling.

Mr. Chambers: Exception. The next paper identified by the witness, bearing date the 25th day of May, 1913, between the Gulf Refining Company and the Public Service Gas Company, and ask that it be marked for identification.

27492

The Master: Same ruling.

Mr. Chambers: Exception. The next paper, being dated June 21, 1919, between the Gulf Refining Company and the Public Service Gas Company, which paper was identified by the witness.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. I now show you another paper and ask you if you are able to say after looking at it whose signatures you find at the bottom of the sixth page, Mr. Lyon?

Mr. Ransom: Same objection.

The Master: Overruled.

A. G. R. Nutty and J. L. Richards. I do not know Mr. Richards.

By the Master:

Q. Mr. Chambers asked you to state if you knew whose signatures were there.

A. No; I do not know Mr. Richards. 27494

Q. You do not know Mr. Richards' signature?

A. No, I do not know Mr. Richards' signature.

By Mr. Chambers:

Q. Of the Boston Consolidated Gas Company?

A. I do not.

Mr. Chambers: I now ask to have marked for identification this paper dated September 29, 1916, between the Gulf Refining Company and the Boston Consolidated Gas Company.

The Master: Same ruling.

Mr. Chambers: Exception. I now offer in evidence the paper heretofore referred to—

The Master: All of these papers that you have just described you ask to have marked for identification. 27495

Mr. Chambers: With the exception of the last one between the Gulf Refining Company and the Boston Consolidated Gas Company.

Mr. Ransom: Same objections as hitherto stated.

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: I repeat for the record, I will permit counsel to interrogate Mr. Lyon as to

what gas oil was sold for during the respective periods by his company in this market.

Q. Mr. Lyon, in 1910, do you recall to whom you sold gas oil in your territory here, what companies were making gas in the City of New York?

A. No, I cannot recall without referring to my records.

The Master: Are your records here?

The Witness: No, sir.

The Master: In your office?

The Witness: Yes, sir.

27497 Q. The records are here in your office?

A. Yes, sir.

Q. That is to say, you can, by referring to your records, say with whom you had contracts in your territory during those years?

A. Yes, sir.

Q. How far back?

A. It is difficult to say, because every two years I box up my records and ship them away. It would be difficult for me to unearth them as far back as 1910.

Q. It would be?

A. Yes, but I could procure at least a record, I am

27498 sure, either through my own office or through our Pittsburgh office.

Mr. Chambers: That is all for the present.

By the Master:

Q. Mr. Lyon, you have all of the records for the last two or three years?

A. Yes, sir.

Q. You could give us, if you were asked, the price at which various trades were made and oil sold?

A. Yes, sir.

Q. And the people to whom you sold it?

A. Yes, sir.

Q. In the last two or three years?
A. Yes, sir.
Q. Without very much trouble?
A. Yes, sir.

The Master: Any other questions?

Mr. Chambers: I expect to recall him.

Mr. Ransom: I have no questions at this time in view of counsel's statement.

By Mr. Chambers:
Q. Will you be here in town right along?
A. Yes, I am here right along.

Mr. Ransom: I will ask Mr. Lyon one or two questions. 27500

Cross-examination by Mr. Ransom:

Q. Did you sign any of these contracts?
A. None of these here.
Q. Are you in charge of sales in this New York territory?
A. Yes, sir.
Q. Who is Mr. Nutty?
A. He is vice president of our company with headquarters in Pittsburgh.
Q. Isn't he in charge of sales here?
A. No; he is in charge of the entire sales department. I represent a certain district under Mr. Nutty. 27501
Q. You don't sign contracts?
A. I do, subject to Mr. Nutty's approval.
Q. These are contracts which Mr. Nutty signed?
A. I had nothing to do with the negotiation of these particular contracts; they are not in my territory.

By Mr. Chambers:
Q. Have you this data with you that the Master asked you about?
A. No; I have no data concerning contracts.

27502 E. A. Lyon, Cross.

Q. You cannot now give us the price of oil in your territory?

A. No, sir.

Q. Until you go and look it up?

A. No, I would have to refresh my memory from the records.

The Master: Any further questions at this time?

Mr. Ransom: I have no further questions in view of the fact that he is to be recalled?

Mr. Chambers: That is all for the present.

27503 I don't say he is going to be recalled.

The Master: Mr. Ransom, don't get into the O'Brien habit of reserving something.

Mr. Chambers: I do not say I am going to recall him. In a little while you will be saying that I agreed to recall him.

Mr. Ransom: I will ask one further question.

By Mr. Ransom:

Q. Is the Public Service Gas Company in your territory?

A. Yes.

Q. Did you negotiate these contracts?

A. No, sir. That was also negotiated between

27504 Nutty and Pearson.

Q. You don't negotiate these contracts?

A. Not the ones you refer to, but there are other contracts that I do negotiate.

Q. But you didn't negotiate the Public Service Gas Company contracts?

A. No, sir.

Q. You do negotiate with some of these little companies?

A. That is right.

Q. Not the big ones?

A. Not these particular ones.

27505

Mr. O'Brien: Your Honor, there isn't anything in the record about little ones or big ones, except those two babies, the Ransom baby and the Gilbert baby.

By Mr. Chambers:

Q. Who did negotiate these, was it Mr. Nutty that negotiated these contracts with the Public Service Gas Company?

A. Yes.

Q. If you looked at this contract, the first one here dated June 1st, and June 3rd, 1910, if you looked at that, would that refresh your recollection as to the price for gas oil at that time which your company was willing to sell for?

27506

A. I could only say that that far back it would indicate about what the general price was.

Q. If I show you that, would you be able to say after looking at it?

A. No, I could not, beyond what I have said.

Q. Just look at that contract here dated June 1st, and June 3rd, 1910, before I ask you look at it carefully, and see if you are able to say whether or not that was the price at which your company was willing to sell gas oil at least in that quantity?

Mr. Ransom: I object to that. It is incompetent in form, it is incompetent in substance, and is not the method of proving market price, or proving the availability of supplies to the Consolidated Company at any particular price.

27507

The Master: That is really not a question. Have you looked at that paper, Mr. Lyon?

The Witness: Yes.

Q. Are you able to say now?

The Master: Are you able to say what the market price was that your company was selling oil for at that time?

27508 E. A. Lyon, Cross.

The Witness: No.

The Master: Why not?

The Witness: That is probably a large quantity, I haven't looked at it, a large quantity where a special price was probably made.

Q. Well, for that quantity?

A. I should say yes, because we sold it at that price.

Q. That was the fair market price for that quantity?

Mr. Ransom: I object to that as incompetent and immaterial. That is not the proper method

27509 of proving market price.

The Master: No, I will not let this witness say any more than he has said, that the company was apparently willing to sell that particular company that quantity at that price.

Mr. Ransom: And that kind of oil?

The Master: That kind of oil.

Mr. Ransom: And under those conditions.

The Master: What company is this we are talking about, the purchasing company?

The Witness: The Public Service Gas Company of Newark.

Q. That company is in your territory?

27510 A. The Public Service Gas Company, yes.

Mr. Ransom: It appears that he had nothing to do with it.

Q. Would you have sold any company that quantity at that price at that time?

Mr. Ransom: I object to that. It does not appear that this witness had anything to do with the Public Service Gas Company contract, he doesn't know what may have been the moving consideration, he did not negotiate it, he did not sign it. The fact that it is in territory in which

he does sometimes negotiate with a few companies, or some companies, does not in any way qualify him to testify with respect to what was the moving consideration for this contract. It is wholly incompetent as a method of proving the price at which the Consolidated Company could have obtained the gas oil at that time, or at the time that the Consolidated did have to obtain it.

Mr. Hayward: Judge Ransom's theory being that the Consolidated bought oil in such large quantities that it had to pay more for it than 27512

Mr. Ransom: I have not urged any such other companies. The wholesale price was greater than the retail price.

theory.

The Master: Do you know anything about this contract of July 31, 1908?

The Witness: No, except in a very general way. We have had contracts with the Public Service Gas Company for many years.

The Master: I won't let the witness answer these questions. I will let you ask the witness what he was offering oil for, what quantities and what quality. 27513

Q. After looking at that, what were you offering oil for?

A. I cannot answer; it is too far back.

Q. Looking at this, would you say that that was the price that you were offering oil for—

Mr. Ransom: Objected to. Why are they so afraid to let this witness look up the data?

Mr. Chambers: Why are we?

The Master: I will let the witness say, in view of what he just told me, that the price

fixed in this contract was the price they were quoting generally, if he can. Can you?

The Witness: I can't say that.

Q. You were willing to sell, weren't you—

A. A figure approximately that.

Mr. Ransom: I object to Mr. Chambers continually leading his own witness.

Q. You mean by "approximately" that you were willing to sell all comers—

The Master: Don't mention the price.

Mr. Chambers: I was going to.

27515 The Master: No, I will let you ask this witness as an independent question the price at which he was quoting gas oil, in what quantities and what qualities at that time.

Mr. Chambers: I ask him to refresh his recollection by this paper if he wants to.

The Master: If he wants to.

The Witness: I couldn't say what my price here was.

Mr. O'Brien: I rise to make an objection to the continual interruption by Judge Ransom of the questions asked by Mr. Chambers, and also the questions put by the Master.

27516 The Master: There is nothing to object to. Mr. Chambers, do you want to ask this witness what his quotations were for oil at that time?

Mr. Chambers: I do.

The Master: Can you tell us?

The Witness: I cannot.

Q. Was it approximately the figure stated in this paper?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Q. Was it $2.45 a gallon?

Mr. Ransom: Objected to as highly improper.

The Master: Objection sustained.

Mr. Ransom: I think that should be physically stricken from the record.

The Master: No, I will ask the witness now, was it $4.55 a gallon?

The Witness: I could not say.

Q. Was it $2.45?

A. I could not say.

The Master: Was it $4.45?

The Witness: I could not say.

Q. Can you, if you look up your records? 27518

A. Yes, I could look up my records and see what sales I made and what quantities.

Q. Your quantities would not be this quantity?

A. No.

Q. For this quantity what would it be?

Mr. Ransom: I want to object to this insistent effort not only to lead the witness, but to cross-examine his own witness in most vigorous fashion. He is wholly dissatisfied with the witness's answers apparently.

Mr. Chambers: I am wholly satisfied with them. Again, while you may be infallible, you are in error on this particular occasion. 27519

The Master: I shall sustain the objection when you say "this quantity." I will let you ask the witness whether in quantities as large as 125,000,000 gallons, for a period of three years, the price would have been that.

Q. In quantities of 125,000,000 gallons for a contract say as long as from June 1, 1910, to December 31, 1913, what was your company quoting oil at, or selling gas oil at in this territory?

The Master: Do you know?

Mr. Ransom: I object to that.

27520 E. A. Lyon, Cross.

A. I could not say without referring to my records; it is too far back.

By Mr. O'Brien:

Q. Are those records here in New York, Mr. Lyon?

A. Yes, some records which would establish the prices at which gas oil was sold.

Q. Now, Mr. Lyon, I show you another paper here. What were you quoting and selling gas oil at for quantities as large as 252,000,000 gallons?

The Master: Mr. Chambers, you don't want to waste time, do you?

27521 Mr. Chambers: No.

The Master: This witness has told us not once, but a number of times, that he can't and won't give us any figure that he knew about that were being quoted in his territory.

Mr. Chambers: As far back as 1910. Here is 1914.

By the Master:

Q. Could you for 1914?

A. No, I can't even recall that.

Q. Or 1915?

A. No.

Q. Or 1916?

27522 A. No.

Q. Or 1917?

A. Well, I do not quite want to. I could only give that roughly, approximately.

Q. 1918?

A. Yes.

Q. Could you give the figures fairly accurately for 1918?

A. 1918, yes.

Q. And 1919?

A. 1919, yes.

Q. You could, without going back to your records?

A. Yes.

Mr. Chambers: Your witness. You will come back, Mr. Lyon, will you, if I let you know by telephone?

The Witness: Oh, yes.

Mr. Chambers: Without subpoena? You will come back again without subpoena, if I telephone you?

The Witness: Oh, yes.

Mr. Ransom: No questions. 27524

(Witness excused.)

Mr. Ransom: Do you think we ought to wait further while Mr. Chambers and Mr. O'Brien confer with the witness? We have waited a number of minutes while they have conferred with the witness.

Mr. Neumann: I object to that, that is not fair.

Mr. Chambers: I now offer in evidence from Senate Documents 1886, Vol. 4, Nos. 47 and 70, pages I to LXXIII, where appears the signature of John I. Gilbert, being the report of the Special Committee of the Senate to investigate 27525
lighting companies, dated March 1, 1886, and addressed to the Senate and bearing date February 26, 1886, the part I offer being the report of the chairman and minority member of the Commission, there being two other commissioners who signed a separate report which has been offered in evidence by the complainant, as I understand it, and in this report the other two members of the Commission, Mr. T. Robinson and Mr. M. C. Murphy did not concur in all the details.

27526

Mr. Ransom: What you are offering is the minority report of John I. Gilbert.

Mr. Chambers: No, I am offering the majority report except insofar as the other two did not concur.

Mr. Ransom: That is what you are offering?

Mr. Chambers: It is a majority and minority report, both.

Mr. Ransom: Well, you are offering the report from these gentlemen?

Mr. Chambers: I stated what I offered on the
27527 record.

Mr. Ransom: I am trying to clarify it.

Mr. Chambers: Well, are you cross-examining me?

Mr. Ransom: No, I am merely asking you to make your offer clearly.

Mr. Chambers: Well, there it is, I have stated it clearly.

Mr. Ransom: I object to the receipt of the report or the memorandum which purports to have been prepared by this John I. Gilbert, on the ground that this was not the report of the committee, it was merely a statement by one of
27528 the members of the committee, not the report of the majority, Mr. Robinson and Mr. M. C. Murphy, presented the report of the majority, and it was not a judicial investigation so that it would come within the rule of a minority determination, by a judicial body; it was merely a dissenting statement by a member of the committee who did not agree with the majority.

The Master: Did you offer the majority report?

Mr. Chambers: That is not so. Only about one-half of what he said is true. That is Ran-

27529

som's idea. This is a report by Gilbert, the chairman, in which the other two members concurred in a large part of it. He has not read it, apparently. And in the second place—

The Master: What is the purpose of the offer?

Mr. Chambers: It is not a dissenting opinion.

The Master: How does it bear on this case?

Mr. Chambers: It bears on the original value of the property.

The Master: All right.

27530

Mr. Chambers: It shows that this company, that all the property that was invested in capital was $15,500,000, and that is all, and the rest is water, and has been water from 1885 down to the present moment. That is what it shows.

Mr. Ransom: Not even fifty per cent of that statement comes within the realm of facts.

Mr. Chambers: Well, I will read extracts to prove it is so, right out of the record.

Mr. Ransom: One man named Gilbert who was on this committee, who made a dissenting statement.

Mr. Chambers: That is not correct, it is not a dissenting statement.

27531

Mr. Ransom: The majority report was commented upon to a considerable extent by the Supreme Court of the United States.

Mr. Chambers: It is not a dissenting report.

The Master: Did you offer any part of this?

Mr. Ransom: I offered in evidence the report of the majority.

The Master: The what?

Mr. Ransom: The report of the majority, Mr. Robinson and Mr. Murphy.

27532

The Master: Well, then, this that runs down to LXXIII—

Mr. Ransom: Yes.

Mr. Chambers: And this is the report of the majority, on a large part of the investigation. The three numbers of the committee disagreed as to whether the Consolidated Gas Company had violated the law, Gilbert maintaining they had, and the other two maintaining they had not.

The Master: This is dated Albany, February 26, 1886, and it seems to be signed by T. Robinson and M. C. Murphy.

27533

Mr. Chambers: Those are two members of the committee that did not concur in all respects with Gilbert's majority opinion.

The Master: Where is Gilbert's majority opinion?

Mr. Chambers: What I offer is the majority opinion, except as to that little bit that the other two did not concur in. It is a majority opinion upon all things except the little part that they mention in there.

The Master: How has this any probative force in this case?

27534

Mr. Chambers: Why, in the first place, he offered a part of it, and I have a right to offer the rest.

The Master: That is what I am trying to get clear. What did Judge Ransom offer?

Mr. Chambers: On the property that was acquired by the Consolidated Gas Company on consolidation.

The Master: Yes.

Mr. Chambers: This shows what property came into its possession when it was consolidated, what investment—what was invested in capital.

27535

They took each one of those companies and showed how much money they had actually put in.

The Master: Let me get this clear in my head.

Mr. Ransom: I think I can clarify it.

The Master: If you will just answer a question, I may get it. Did you offer any part of either the Gilbert report or the Robinson and Murphy report?

Mr. Ransom: On the question with respect to this $7,781,000 for franchise and rights.

The Master: Yes.

27536

Mr. Ransom: As you may recall, I said that I desired to make in this case the same record upon which the Supreme Court of the United States made its prior finding.

The Master: Well, can't I get a direct answer? Was any part of this offered?

Mr. Chambers: Yes.

Mr. Ransom: I offered upon that question the part appearing in the Murphy and Robinson report.

The Master: In other words, you started at page 63 and ended at page 81?

Mr. Ransom: As I recall it.

27537

The Master: And now Mr. Chambers offers the first 73 pages?

Mr. Chambers: Yes.

Mr. Ransom: The Gilbert part.

The Master: Is that right?

Mr. Chambers: Correct.

The Master: The part that you offered must necessarily refer to the part that Mr. Chambers now offers, doesn't it?

Mr. Chambers: Oh, very much.

27538

Mr. Ransom: Your Honor, you will remember that you expressed the opinion at that time that you did not think that even the part that I was offering was very clearly proof of the franchise and rights question.

The Master: I think so yet, but since you offered in part of it, I will take the balance of it.

Mr. Ransom: You took it in view of the Supreme Court opinion which quoted so largely from this Robinson and Murphy report.

The Master: Then I will take the rest of it.

27539

Mr. Chambers: I offer it on the additional ground that the books of these old companies are lost, and I offer it as secondary proof of the contents of the books.

Mr. Ransom: I object to it.

The Master: I will take the balance of the report as bearing upon the part you read in evidence.

Mr. Ransom: Exception.

Marked Defendants' Exhibit AA46.

Mr. Chambers: Would your Honor care to have me read one or two little passages of it?

The Master: Not just now.

27540

Mr. Chambers: I would like to, it is very important.

The Master: I am curious to see how much you say is the cost of making and distributing gas.

Mr. Chambers: I hope before you decide this case you will read carefully this document.

The Master: If it ever comes to a question of invested capital, of course I will, but I want to find out first whether you are able to meet the evidence that it costs them more to make and distribute gas than they get for it.

27541

Mr. Chambers: One reason why I would like to have you read it is because you made the statement some time ago that you were going to allow this company for capital just the stocks it issued when it consolidated.

The Master: Yes.

Mr. Chambers: Now, this here—

The Master: I don't care what they say about it.

Mr. Chambers (continuing): Points out—

The Master (interrupting): I don't care what they say about it.

Mr. Chambers: I do, and I think you ought 27542
to.

The Master: No.

Mr. Chambers: You are deciding this case.

The Master: And I am not at all interested in what that committee thought about it.

Mr. Chambers: They made findings of facts.

The Master: The United States Supreme Court has passed on all this.

Mr. Chambers: Passed on this?

The Master: On this question of what is invested and what is the cost, or what the cost was, certainly.

Mr. Chambers: Of this company? 27543

The Master: Why certainly.

Mr. Chambers: They declared a mistrial.

The Master: No, sir, the United States Supreme Court said that $30,000,000 or about $30,000,000 of stock was the value of that property when acquired by legislative exactment.

Mr. Chambers: You yourself held that that decision was of no value as the proof of anything. When we come to that, you will have a different situation.

27544

Mr. O'Brien: I want to register my exception to your Honor's iconoclastic views about not caring for this report.

The Master: I don't think it has any probative force.

Mr. Chambers: Well, I have commended it to his careful consideration.

The Master: What else?

Mr. Chambers: I now offer in evidence testimony which is a part of the report of Mr. Yalden, which will be found in this volume at the following pages, and I offer those pages: 288 to 296 inclusive, 338 to 347 inclusive, 359 to 375 inclusive, 494 to 497 inclusive, 778 to 781 inclusive, 433 to 441 inclusive, and 455 to 468 inclusive.

27545

Mr. Ransom: I object to the offer.

The Master: Which takes in the report of Mr. Yalden upon which all the committee acted.

Mr. Ransom: This is not a competent method of proving any facts pertinent to this case. A legislative committee is not a judicial body, bound by no rules of evidence, practically. It may take anything or nothing. The report of a legislative committee is not of necessity based on matters proven in an orderly way in the testimony. These witnesses have not been subjected to an examination of any judicial tribunal, or cross-examination of any judicial tribunal by this complainant or anyone else.

27546

Mr. Chambers: My answer to that is he offered in evidence this report.

Mr. Ransom: I offered no testimony and no part of the testimony.

The Master: Objection sustained.

Mr. Chambers: Exception. Then I offer separately the part of this testimony as a part of the report that was offered.

27547

The Master: I took the pages that you offered, and that is all I will take.

Mr. Chambers: What?

The Master: I took the pages 1 to 83, I think it was, or 81, down to the signatures Robinson and Murphy, that is all.

Mr. Chambers: Well, the rest goes in then, with it?

The Master: No, sir, I won't take anything beyond those pages.

Mr. Chambers: Then I offer separately the part of the paper that complainant offered in evidence, and referred to in it, the report of 27548
Mr. Yalden—Well, the table of Mr. Yalden. It is found in this record attached to and made a part of the report.

Mr. Ransom: I object to the offer.

Mr. Chambers: And I am going to ask your Honor to consider this very carefully, because you allowed counsel for the complainant to offer in evidence what is known as the Thomas F. Rowland report, and it would be very unfair, most unfair, not to allow the defendants to offer in evidence the other report, under the same scheme, of Yalden. Rowland is a part and Yalden is a part, and having permitted him to 27549
offer the Rowland we should be allowed to offer the Yalden.

Mr. Ransom: May I just say a word on that. The reason that the Rowland report was offered and received, I take it, was this: Under the legislative authorization of consolidation, the consolidation agreement approved by the legislature, the statutory plan for the issuance of the securities of the new corporation, the Rowland report was the basis; it was the basis on which the books of the company were opened, it was the basis on which the authorized stock under the act of the legislature was issued.

27550

This Yalden report which was a part of the testimony before this committee of the legislature, headed by Senator Gilbert, was not a matter which had any relation to the prior legislative plan, to the consolidation agreement or anything else. Yalden was simply a man brought in to testify before the legislative committee. The majority of the committee did not even follow it.

Mr. Chambers: Yes, they did.

Mr. Ransom: In view of your Honor's ruling in excluding the rest of this testimony, it would certainly be very anomolous to segregate part of it and say that Mr. Yalden, who testified under circumstances of no orderly legal cross-examination—that his testimony or his tables or his exhibits should now be received.

27551

The Master: Objection sustained.

Mr. Chambers: I cannot understand your Honor's ruling, in view of the fact that you allowed the Rowland report in.

The Master: I will not explain my ruling.

Mr. Chambers: Probably it may be in when the report is in, but I ask that his report or appendix to the report found at page 635 over to 781 be marked for identification.

27552

The Master: It is not necessary.

Mr. Chambers: Is it being ruled out because I have not properly proved it by this book?

The Master: No, I am ruling it out because I do not see how any evidence given in that investigation can be read into the record here.

Mr. Chambers: Yes, but you allowed the Rowland report in.

The Master: No, the Rowland report stands on an entirely different basis.

27553

Mr. Chambers: No, no, just the same; it is right in here, this is where he found it. We also offer it as secondary evidence of the contents of the books which are missing. If you will look at this, I cannot see how you deprive us of the benefit of this in view of the Rowland report. He was not cross-examined and his report is found in here.

Mr. Ransom: We have the original Rowland appraisal here.

Mr. Chambers: I am asking your Honor to look at this carefully, because it forms a very important part in our defense, as the basis of some of these—

27554

The Master: I would not have taken any part of this report if it had not been for the United States Supreme Court.

Mr. Chambers: All of this was offered before.

The Master: I do not see on what theory it went in.

Mr. Ransom: They had no power to exclude it.

Mr. Chambers: Why not?

Mr. Ransom: Because under the equity rules that prevailed at that time he had to take everything.

27555

Mr. Clark: He had the power to rule on it, and he ruled it in.

Mr. Ransom: This Yalden report is utterly incompetent.

Mr. Chambers: Not so much so as the Rowland.

Mr. Ransom: The Rowland was the statutory basis under the legislative plan for consolidation. We have the original Rowland report here, which was the basis.

27556

Mr. Chambers: It was in before, and I think it is competent.

The Master: On what theory?

Mr. Chambers: It was part of that proceeding. The books are gone. It was a senatorial proceeding. He has offered part of the report in evidence; he has offered Rowland, a part of the report of the committee, and this is a part of it.

Mr. Ransom: Of course it does not go in as a part of it.

Mr. Chambers: I think it does.

Mr. Ransom: You cannot get anything in that way.

27557

Mr. Chambers: I ask your Honor not to rule this out until you have examined it carefully. I did not suppose there was any doubt about this.

Mr. Ransom: Yalden was not under cross-examination in any judicial proceeding.

Mr. Chambers: Was Rowland?

Mr. Ransom: Yes.

Mr. Chambers: When was Rowland cross-examined?

Mr. Ransom: His plan was the statutory basis.

Mr. Chambers: Do not state anything that is not correct. Why was not Yalden's?

27558

Mr. Ransom: Yalden had not done anything on it, in connection with the consolidation. This does not come within the category of secondary evidence.

The Master: Is Yalden alive?

Mr. Chambers: No, he has been dead a long time. I will prove that he is dead if you want me to.

Mr. Ransom: There have been subsequent examinations by persons who knew about the books.

The Master: I will sustain the objection.

27559

Mr. Chambers: Exception. I ask that those pages be marked for identification.

The Master: I do not think it is necessary; you have identified the pages by reference.

Mr. Chambers: I think we better have them marked; it is so important. Exception to your ruling.

Mr. Ransom: I object to this. This thing, being prepared by a man named Yalden, I object to it even being marked for identification. I do not believe that thing should be.

Marked Defendants' Exhibit AA47 for identification.

27560

Mr. O'Brien: May I ask upon what your decision is based, your Honor?

The Master: I do not think it is relevant; I do not think it is testimony at all.

Mr. O'Brien: How can you include one without including the other?

The Master: Do not let us waste time on that.

Mr. O'Brien: It is understood I am excepting to every ruling your Honor makes when either one of the other defendants except.

The Master: Yes.

Mr. Chambers: Did I say I offered it as secondary evidence of the contents of the missing books?

27561

The Master: Yes.

27562 John F. Tracey, Direct.

JOHN F. TRACEY, recalled as a witness by the defendant Newton, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. You have already been sworn, Mr. Tracey?

A. Yes, sir.

Q. What is your occupation again?

A. Deputy Tax Commissioner for The City of New York.

Q. And you have been for how many years?

A. Since 1898.

27563 Q. Mr. Tracey, did you as Deputy Tax Commissioner assess the Block 951, Lot 35, in the year 1906?

A. I did.

Q. And what were the dimensions of that lot in 1906 as you assessed it?

A. 176 feet on East 20th Street by 92 feet in depth.

Q. Did you assess it at its full value?

A. I did.

Q. What was the assessment?

A. In 1906 the unimproved was $50,000 and the land and improvements $60,000.

Mr. Ransom: I object to the interrogation of the witness with respect to the land and improvements, as not within any issue of this case. It

27564 relates to a time too remote to have any bearing on the issue in the present case.

The Master: Didn't you attempt to prove up your net earnings over a period of years, and the amount paid for taxes?

Mr. Ransom: We offered a table.

The Master: And the property that it included for gas purposes?

Mr. Ransom: They wanted to know the results of our operations over that period and we offered the table. I do not think it is within the issues of the case; I stated at the time we made that up in

response to their request that I did not think it had any bearing.

Mr. O'Brien: You pleaded deficiencies; you pleaded them in your complaint.

The Master: I think I will take it.

Mr. Ransom: Both as to improvement and land with improvements? The witness has not been qualified on improvements.

Mr. Chambers: I did not ask him that yet.

Mr. Ransom: Then I move to strike it out.

Mr. Chambers: I am going to.

Q. Is that the land unimproved? 27566

A. Land $50,000.

Mr. Ransom: I move to strike out the answer he gave with respect to the land and improvements.

The Master: Motion denied.

Q. Was that the full value of the land at that time, in your opinion?

A. It was.

Q. How long had you been assessing property prior to that—how many years?

A. This particular piece?

Q. No, any property.

A. Since 1898. 27567

Q. What did you value that Lot 35, Block 951, with improvements?

Mr. Ransom: We object to that as immaterial and incompetent.

The Master: Overruled.

Mr. Ransom: Exception.

A. $60,000 with the improvements on it.

Q. That made the improvements $10,000?

A. Yes.

Q. For that same lot and block, 1907?

A. $50,000.

Q. And with the improvements?

A. $60,000.

Q. Was that the full value?

Mr. Ransom: I object to that on the grounds already stated. On the further ground that as a witness in behalf of the defendants here, this witness is not entitled to prove the value of the improvements as against the complainant company.

The Master: Why not? If he is qualified to assess the unimproved, why isn't he qualified to value the improvement?

27569 Mr. Ransom: He has not shown anything about what improvements there were. We were entitled to and took this position, which is our position with respect to this case: When public authorities, represented by the corporation counsel and the attorney general, as the legal advisers of the taxing authorities of the State, required this company to pay taxes upon a certain value of land, the company as against them is entitled to the benefit of the assessments which those public authorities imposed. That is, we say that irrespective of how much more our properties may be worth, or our land may be worth, we at least for

27570 the purposes of this case are entitled to say that our land is worth at least as much as the sum on which they required us to pay taxes.

Likewise as to improvements: If the company took the same position, the company would be entitled to say that we are entitled to a return, at least upon the value of improvements on which they require us to pay taxes. This situation now is reversed. These legal advisers of the taxing authorities of the State are endeavoring to prove their own acts as against the company.

27571

The Master: No, they are asking Mr. Tracey, who is qualified as an expert, to give additional expert testimony. I will let him give it.

Mr. Ransom: This further additional thing I will call your attention to. We offered to show—your Honor ruled out part of our proof in that respect—that the taxing authorities had in view of the fact presented to them by this company, that this company was being denied by the Legislature of the State of New York the right to earn a fair return on the value of its property—the taxing authorities of this city and of the State had reduced, not the value of the land below full 27572
value, but they had upon the application of this company, upon the proof that it was being compelled to do business under circumstances not allowing a fair return, reduced the value which would otherwise be put upon improvements, and in view of that state of the record, your Honor having ruled out portions of the petition upon which such action was taken by the taxing authorities, on which they determined that these values were to be lowered in view of the confiscatory character of the regulation imposed by public authorities, these values are not probative as against this company. 27573

The Master: Objection overruled.

Mr. Ransom: Exception.

The Master: What was the value of the improvements?

The Witness: In 1907?

Mr. Chambers: Yes.

Mr. Ransom: I wish to make one further objection which my colleague just called my attention to. Where a man like Mr. Tracey may be and is well qualified to assess the unimproved value of the land, when it comes to assessing

gas property, works, machinery, plant and buildings of that special sort, his qualifications have not been shown.

The Master: I am going to take his testimony and will consider it in the light of the argument that it requires special knowledge to value gas property.

Mr. Ransom: Exception.

Q. In 1907, with improvements?

A. $60,000 with the improvements on it.

Q. That is the same as 1906?

27575 A. The same as 1906.

Q. Just to go back to 1906, what month is that of?

A. That assessment, as I recall now was made the second Monday in January up to 1911. In 1911, the law changed, and the books opened on the first Monday of October. Prior to that it was on the second Monday of January, to the best of my recollection.

Q. Up to 1911, what you say will be as of that date?

A. The second Monday in January. When I say a year, I mean the tax year.

Q. Now, 1908, the same lot and block?

27576 A. $60,000 for the unimproved.

Q. How much for the improvements?

A. $70,000 with the improvements thereon.

Q. For 1909?

A. $60,000 for the unimproved; $69,000 with the improvements thereon.

Mr. Ransom: This is all over my objection and exception?

The Master: Yes.

Q. Now, 1910?

A. $60,000 for the unimproved, and $69,000 with the improvements thereon.

Q. 1911?

A. $62,000 for the unimproved; $49,000 with the improvements thereon.

Q. 1912? That is where the date changes, or 1911; did the date change for that year?

A. I cannot recall the year the law changed. It changed sometime around 1911, for the books to open in October instead of the second Monday in January.

Q. That 1911 assessment you spoke of, that was for the second Monday in January?

A. I can't tell you now. It was for the 1911 tax. I cannot tell you the date of the opening of the books, but those years refer to the tax year and the assessment levied against the property for that year. 27578

Q. Now, for 1912?

A. I didn't assess it then.

Q. Did you assess it in any later year?

A. Yes, I may have—that I do not recall. The information given to me by the Assistant Corporation Counsel was that he wanted the values from 1906 to 1911 on that piece.

Q. How long had you been assessing the improvements on real property prior to 1906?

A. Since 1898.

Q. All kinds of improvements?

A. All kinds. 27579

Q. Buildings, factories?

A. All kinds.

Q. Gas holders?

A. Yes, sir.

Q. And gas making plants?

A. Yes, sir.

Q. And these values you have given are the full values of the property and the improvements?

A. In my opinion.

Q. Now, Block 952, Lots 7 and 35—did you assess Block 952, Lot 7 in 1906?

A. I did.

Q. What was your dimension for that lot that you assessed that year?

A. 423 feet on East 21st Street and 444 feet 6 inches on East 20th Street, running through the block.

Q. What was it on East 20th Street?

A. 444 feet 6 inches.

Q. What was the dimensions, what was the width of the lot?

A. Running through the block.

27581 Q. 184 feet?

A. 184 feet; the center line of the block was 92 feet.

Q. On the easterly side there is a little jog there?

A. That makes the 444 feet 6 inches, while it is 423 feet on East 21st Street. That shows the difference between those two figures.

Q. Have you the dimensions of Lot 35 on the westerly side?

A. I have.

Q. What is that?

A. 65 by 94, on the southwest corner of 21st Street and Avenue A.

27582 Q. Have you that little jog in there?

A. Yes, on Lot 33 that would be.

Q. Is your Block 952 just the same as that (showing paper to witness)?

A. Take 70 feet off of that.

Q. Then your Block 952 is the same as this I show you?

A. Yes, sir.

Q. What did you assess that Block 952, Lot 7 for in 1906?

Mr. Vilas: Same objection.

A. The unimproved $275,000; with the improvements thereon, $335,000.

Q. And for 1907, the unimproved?

A. The unimproved $325,000.

Q. And the improved?

A. $335,000.

Q. For 1908?

A. $325,000 unimproved; $335,000 with the improvements thereon.

Q. And 1909?

A. $325,000 unimproved; $335,000 with the improvements thereon.

Q. 1910?

A. $325,000 unimproved; $345,000 with the improvements thereon. 27584

Q. 1911?

A. $325,000 unimproved; $345,000 with the improvements thereon.

Q. The dates when the books were opened and the taxes were the same as the last one, the second Monday in January?

A. The second Monday in January.

Q. Down to 1911?

A. Down to 1911.

Q. Do you recall the 1911 one?

A. I can't tell whether that was October or the second Monday in January, but the tax was levied for the year 1911, irrespective of the opening of the books. 27585

Mr. Ransom: May I interrupt to ask whether the witness is testifying from a book or from something that somebody has gotten up for him

The Witness: Nobody got this up for me. I took this from the records, I am testifying from the records. This is an official record. These field books are not official, and I would not take chances with them.

Mr. Ransom: What are the sheets of paper in your hand?

The Witness: Those I copied from the official records.

Mr. Ransom: You are not testifying from the records now?

The Witness: No, from these copies.

Q. Were these values for the period from 1906 to 1911, inclusive, the full value of Block 952, Lot 7, with the improvements thereon?

A. They were, according to my opinion.

Q. Now, take Block 952, Lot 35, what were your dimensions for that?

27587 A. 65 feet on Avenue A, at the southwest corner of 21st Street, running along East 21st Street 94 feet.

Q. Front and rear the same?

A. Front and rear the same.

Q. What did you assess that for in 1906 without the improvements?

A. $25,000.

Q. And with the improvements?

A. $45,000.

Q. Was that the full value of the property in your opinion?

A. That was the full value of the property in my

27588 opinion.

Q. With the improvements?

A. With the improvements and unimproved.

Q. And for 1907?

A. $25,000 unimproved, $45,000 with the improvements thereon.

Q. And 1908?

A. $37,000 for the unimproved; $55,000 with the improvements thereon.

Q. 1909?

A. $37,000 unimproved; $55,000 with the improvements thereon.

Q. 1910?

A. $37,000 unimproved; $47,000 with the improvements thereon.

Q. 1911?

A. $37,000 unimproved; $47,000 with the improvements thereon.

By Mr. Ransom:

Q. May I ask, are you testifying as to all the years in which you assessed this property?

A. Yes, sir.

(Recess.)

By Mr. Chambers: 27590

Q. Mr. Tracey, when you speak of these assessments—when you speak of the change having taken place in 1911, has your recollection been refreshed that that was in 1912?

A. Yes.

Q. That is, the change did not affect the 1911 assessment?

A. No.

Q. So that all of these assessments you have spoken of so far were the value of the property as of the second Monday in January?

A. The opening of the books.

Q. Which was when? 27591

A. The second Monday of January.

Q. Now, Lot 35, what did you assess that for in 1906, Lot 35, Block 952, without the improvements?

A. Unimproved $25,000.

Q. And with the improvements?

A. $45,000.

Q. Was that its full value, both unimproved and improved?

A. It was at that time.

Q. In 1907?

27592

Mr. Ransom: I want it to appear that this is over my objection and exception, not only as to the qualifications of the witness, but if it is being received on the theory that he is qualified to testify regarding the value of these improvements the same as he testified as to the value of the land, it does not appear what improvements there were on the property, and I have never known of a case in which a man has been permitted to testify to the values of buildings, machinery, apparatus and the like, in a gas case or any other case involving the value of property, where he

27593

does not first state what property it was, and his knowledge of what property it was, and indicate the property for which he is giving opinion testimony as to its value. Suppose they should put on an engineer and ask him what was the value of the improvements on Lot 35, Block 952, in 1907, would you allow him to testify? Why, no. You would require him to show what the improvements were which he valued, you would require him to tell what it was.

The Master: Isn't that part of Judge Ransom's objection correct, that the witness ought to describe the property which he appraised as improved?

27594

Mr. Ransom: The property which he values, the improvements. Mr. Chambers has had him describe the boundaries and dimensions of the land. That qualifies a person who knows the value of land so situated—

The Master: I think there is some force in that objection, that the witness ought to describe the improvements that he values.

Mr. Ransom: I move to strike out the testimony of the witness regarding improvements.

The Master: No, I won't do that, because you did not raise the objection before.

Mr. Ransom: I did essentially, that he didn't know what the improvements were.

The Master: I will let his testimony stand so far as it has gone. I think it may very well be urged that there isn't any basis for his estimate of value, because he has not described the improvements.

Mr. Ransom: In the very first objection that I stated, as I recall it, one of the grounds of the objection was that he didn't know what the improvements were, and that he was not qualified to testify. 27596

The Master: I don't think you did.

Mr. Ransom: I did not call attention to it in the same specific way in which I now have.

The Master: I think I should have accepted your suggestion at that time if you had made it.

Mr. Ransom: Exception.

Q. For 1907 with improvements?

The Master: I sustain the objection.

Q. What improvements were on that lot?

A. A two-story building, 65 by 49.

Q. That is Lot 35?

A. Lot 35, Block 952.

The Master: With that improvement on it what did you value it at? 27597

The Witness: $45,000 for 1907.

The Master: Is that the same improvement that was on it in 1906?

The Witness: Yes, sir.

Q. Now, 1908, unimproved, that same lot?

A. $37,000 for the unimproved.

The Master: Don't give the value until you state whether the same improvement was on it in 1908.

The Witness: The same improvement was on it in 1908.

Mr. Ransom: I object to his testifying to these values, because he has not given a sufficient identification of this building.

The Master: I will overrule that. He appraised a two-story building.

Mr. Ransom: Do you think that is a sufficient foundation for opinion evidence?

The Master: Yes.

Mr. Ransom: Any two-story building?

The Master: Yes.

Q. Now, 1908, the unimproved?

27599 A. $37,000 for the unimproved.

Q. What was on it, the same as 1907?

A. The same building as 1907.

Mr. Ransom: I object to the question unless it appears that the witness has described what knowledge and information he has as to what the improvements were, if he has made a complete statement of the improvements.

The Master: I understand that the witness stated that what he appraised there as the improvement was a two-story building, and that that same two-story building was there in 1906, 1907 and 1908. In 1908 he valued the property as im-

27600 proved at how much?

The Witness: $55,000.

Mr. Ransom: Exception.

Q. Did you give the unimproved for 1908?

A. $37,000 for the unimproved; $55,000 with the improvements thereon.

Q. In 1909 was the same building on there?

A. The same building; same valuation on both.

Q. Same as 1908?

A. Same as 1908.

Q. In 1910 what improvements were on it then?

A. Same building. $37,000 for the unimproved; $47,000 with the improvements thereon.

Q. 1911, the same improvement?

A. The same improvement and the same valuation for 1911 as for 1910.

Q. Now, these values that you have given for 1906 to 1911, inclusive, for this lot 35, Block 952, with the improvements, was that the full value, both unimproved and improved?

Mr. Ransom: They use it continuously. This ambiguous term, "improved."

The Master: It is not ambiguous; it is a two-story building.

Mr. Ransom: And that is all. 27602

The Master: That is all I have heard. Answer the question now. Read the question.

(The question was read by the stenographer.)

A. It was, according to my opinion and judgment.

Q. Now, just to go back a minute to Block 952, Lot 7, what improvements were on that lot and block in 1906?

A. One large gas tank

Q. Is that all?

A. Some small buildings, small brick buildings.

Q. How many of them, do you know?

A. About three.

Q. And those were the improvements that you valued? 27603

A. They were, yes.

Q. Do you know the capacity of the gas tank—gas holder, you mean?

A. No.

Q. It was a gas holder?

A. It was a gas holder.

Q. Were those same improvements on that block and lot 952, Lot 7, for 1906, 1907, 1908, 1909, 1910 and 1911?

A. They were.

Q. Now, to go back a little bit to Block 951, Lot 35, which you described a short time ago, what improvements were there on that lot?

A. A three-story building, 30 X 176.

Q. That was in 1906?

A. 1906, 1907, 1908, 1909, 1910 and 1911.

Q. And that is the same improvements that you valued?

A. That is the improvement that I valued on that parcel.

Q. Well, now, when you say, speaking of these buildings and the holder, you valued everything that you considered a part of the realty, did you?

A. I did.

27605 By the Master:

Q. What did you consider part of the realty?

A. The buildings and tanks.

Q. How about machinery?

A. Machinery that was a fixture to the building.

Q. What machinery was a fixture to the building?

A. The machinery and tanks in the buildings was given to me by the deputy in charge of the real estate of corporations, who had taken that statement from the filed reports of the different corporations filed in Albany.

Q. Can you tell us now what fixtures you took as part of the real estate?

27606 A. No.

Mr. Ransom: I move to strike that out.

The Master: I grant the motion to strike it out.

Mr. Ransom: In view of his testimony now, I move to strike out his testimony regarding improved values, because it affirmatively appears that the witness did not take those from any thought of his own, he took them from a purely hearsay source, what somebody else told him, someone else had said.

The Master: About what?

Mr. Ransom: About the improvement.

The Master: In what respect?

Mr. Ransom: Why, what the value was.

The Master: I do not understand that. I understand he has been giving us his value, haven't you?

The Witness: The value of the improvements on that Block 952, Lot No. 7?

The Master: Yes.

The Witness: Was given by the deputy in charge of real estate of corporations.

The Master: But you did not appraise it? 27608

The Witness: Not the improvements.

The Master: How about 951?

The Witness: 951 I did.

The Master: But 952, you did not?

The Witness: 952 I did not.

The Master: Strike his testimony out as to the value of improvements on 952.

By Mr. Chambers:

Q. Who was that deputy?

A. Joseph Cremen.

Q. Take this 951, Lot 35, where did you say you got your list from on the improvements, the details of it? 27609

A. So far as the assessment is concerned?

Q. Yes.

A. From the annual records.

Q. And you have that list available, have you? You could get it, of improvements, the value of improvements, the details?

A. I do not know what list you refer to.

Q. When you valued Lot 35, the improvements on it.

A. That I valued on the ground, the building 30 X 176, three stories, placed a value on that myself.

27610 John F. Tracey, Direct.

Q. And did you go through the building?

A. No, sir: I took the area from the field books and surveyed the building from the exterior.

Mr. Ransom: You mean you looked at it.

The Witness: No, I surveyed it. I had the dimensions of the building in the field book, and had the area of the land and the area of the buildings, and number of stories high.

Mr. Ransom: You do not mean an engineering survey?

The Witness: Well—

27611 Mr. Chambers (interrupting): I suggest counsel cross-examine him afterwards.

The Master: That is correct.

Mr. Ransom: I move to strike out the word "survey" as being a conclusion.

The Master: I will let it stand.

Mr. Ransom: Exception.

Q. Block 952, Lot 7, you say was done by this man whose name you have given?

A. The deputy in charge of the real estate corporations, so far as the improvements were concerned.

Q. For the whole period?

A. For the whole period.

27612 Q. Did you value it after you had the list?

A. No. I have taken his figures on the improvements, which he had taken from Schedule S, which is figures—

Mr. Ransom: I object to his statement where he got them. How does he know where he got them.

The Master: Yes, I will sustain the objection.

Q. Well, did you know where he got them?

A. I did.

Q. Did you see the list?

A. I did.

Q. Where did he get it from?

A. From the Albany State Tax Department.

Q. In the State Tax Report of the company for 1906, '7, '8, '9, '10 and '11?

A. Yes.

Mr. Ransom: I move to strike it out as purely hearsay and incompetent, he says that someone in the Tax Department showed him the list which he had made up, this deputy made it up from some figures which the State Tax Commission had gotten.

The Master: Yes, I will sustain the objection. 27614

Mr. Ransom: I move to strike it out.

Mr. Chambers: Strike out what, the objection?

The Master: The statement as to the value of the improvements. The statement as to what Cremens showed him.

Q. Where is Mr. Cremens, is he dead?

A. He is dead.

Q. When did he die?

A. I guess about a year ago.

Q. About a year ago?

A. Within a year. 27615

Q. And do you know, if you saw those tax reports, would you be able to identify the improvements that were on it?

A. I would.

Q. And was that the value that the improvements were assessed on that Block 952, Lot 7, the fair and reasonable value, or the fair value, or the full value of the improvements?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained. The witness has said that he did not value it.

Q. Well, are you able to state whether the value that was placed on it—

Mr. Ransom (interrupting): I object to it as incompetent and irrelevant, the witness did not make any valuation.

The Master: Objection sustained.

Mr. Chambers: I am asking if he is able to state.

The Master: He did not appraise it at all.

Q. Well, did you appraise it at all?

A. I have taken under consideration the amount
27617 submitted to me by the deputy in charge of real estate of corporations, and I found in my opinion that that was a fair value to place upon it.

Q. And did you then place that value upon it?

A. I did.

Q. And that was a value of what, these values you have given?

Mr. Ransom: Objected to as incompetent, and I ask leave to examine the witness.

The Master: The witness now says that he did value it. I won't permit any breaking in on the examination.

Mr. Ransom: Well, then, I press the objection.

27618

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. Was it the values you gave a little while ago on these parcels?

A. Yes.

Mr. Ransom: As to what? There is nothing appears as to what property was valued. He has not described the property. This is the most extraordinary opinion evidence regarding gas holders that I have ever heard.

Mr. Chambers: Are you all through now?

Mr. Ransom: I have yet to hear the ruling of the Court.

The Master: Do you recall what improvements there were at this time?

The Witness: The best of my recollection, there was one large tank and two or three small buildings.

The Master: That is the best you can tell us?

The Witness: At this time.

The Master: I will take it for what it is worth. Objection overruled. 27620

Mr. Ransom: Why, it is perfectly ridiculous to allow a man of this sort to appraise a gas holder.

The Master: Maybe it is. You brought this witness here to testify.

Mr. Ransom: I never brought him here to testify to improvements, not as to improvements, gas holders or gas apparatus.

The Master: Just as much as to land. He passed a civil service examination. He is a city official and he placed values on it.

Mr. Ransom: We are entitled to the benefit, as against this company, of what they did; what he is testifying to now, on a different basis. 27621

The Master: I will take it.

Mr. Ransom: Exception.

Q. Are you the same Mr. Tracey who testified here last summer on land value, when called by the complainant?

A. Not last summer.

Q. Last fall, was it?

A. Last fall.

Q In this case, wasn't it?

A. Yes.

The Master: It appears on the record. It says "Mr. Tracey recalled."

Mr. Ransom: Not exactly recalled. Called for the defendant, I would assume.

Q. Now, Mr. Tracey, take Lot 1, Block 953, for 1906, what were the dimensions of that lot and block?

A. 613 feet on East 22nd Street, 615 feet on East 21st Street, between Avenue A and First Avenue.

Q. Yes. And on First Avenue?

A. 197 feet 6 inches.

Q. And the same on Avenue A?

27623 A. 197 feet 6 inches.

Q. Now, did you value that land in 1906 for tax purposes?

A. I did.

Q. What assessment did you place upon that lot and block?

A. $500,000 for the unimproved.

Q. And did you assess the improvements on it?

A. I did.

Q. And what did the improvements consist of?

A. Six small tanks and two small buildings.

Q. And did have before you the tax report of the company to the Tax Department?

27624 A. I did.

Q. And did you use that?

A. I did.

The Master: For a description of the property, you mean?

The Witness: For a description of the property and the value that they placed upon it I took under consideration.

Q. And what did you assess that with the improvements on it for in 1906?

Mr. Ransom: Objected to as incompetent, the witness has shown affirmatively that he, in

the first place, did not really make an independent appraisal, in the second place, on the ground that he has not sufficiently identified and described the improvements which the State Tax Commission assessed to enable your Honor to form any opinion as to whether the property which he has roughly indicated was worth the amount which he figures, or very much more.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Witness: Total value?

Q. Yes, in 1906? 27626

A. $785,000.

Q. Was that the full value, in your judgment?

A. According to my opinion and judgment.

Q. Of the unimproved and improved?

A. Unimproved and improved.

Q. And for 1907?

A. Same value unimproved.

Q. And improved?

A. Same valuation on the improved; same improvements for both years.

Q. In 1908?

A. $530,000 for the unimproved, $785,000 with the improvements thereon; same improvements they used in 1906 and 1907. 27627

Q. And 1909?

A. $530,000 for the unimproved and $785,000 with the improvements thereon, same improvements referred to in previous years.

Q. And 1910?

A. $560,000 for the unimproved and $785,000 with the improvements thereon, same improvements that were there in previous years.

Q. And did I ask you for 1911?

A. No, you did not.

Q. 1911?

A. 560,000 for the unimproved and $785,000 for it with the improvements thereon, same improvements that was on in the previous years.

Q. Those amounts which you have given, were those in your opinion the full value of the property for those years, both improved and unimproved?

Mr. Ransom: Same objection.

The Master: Same ruling.

A. They were, according to my opinion and judgment.

27629 Q. And you fixed that value yourself?

A. I did.

Q. Now, will you take Block 978, Lot 6, Mr. Tracey, and will you give me the dimensions on East 21st Street?

A. The south side of East 21st Street, on Lot 6, Block 978, 666 feet between Avenue B and Avenue A; on the north side of 20th Street, between Avenue B and Avenue A, 596 feet; on the west side of Avenue B, between 20th and 21st Streets, 184 feet; on the east side of Avenue A, at the southeast corner of 21st Street, 46 feet.

Q. There is a little jog there, is there not, in Block

27630 978, Lot 6?

A. It runs down 70 feet, and then runs south about 23 feet.

Q. Then back again?

A. Then back again to a depth of 95 feet 6 inches.

Q. The dimensions you gave, did it run clear over to Avenue A?

A. On 20th Street?

Q. Yes.

A. No.

Q. No, on 21st Street?

A. Yes.

Q. Did you value that in 1906?

A. I did.

Q. For tax purposes?

A. I did.

Q. What valuation did you place upon that lot in 1906?

A. The unimproved $335,000.

Q. And did you value it with improvements?

A. The improvements on that were submitted to me by the deputy in charge of the real estate of corporations.

Q. Who is he, the same man? 27632

A. Mr. Joseph Cremen.

Q. He is dead?

A. He is.

Q. Did he submit to you a list of the property?

A. He did.

Q. And what improvements were on it?

A. That I do not recollect, what improvements were on that. The amounts that he submitted to me —I went and viewed at that time and I placed my own value then on the total with the improvements.

Q. And did he get that list of the property from the tax report?

Mr. Ransom: I object as incompetent and hearsay. How does he know where he got it? He cannot prove that in any such way. 27633

Q. Do you know whether that list of the property, of improvements, was in the tax report?

Mr. Ransom: Objected to on the same ground indicated previously. It is hearsay and utterly incompetent.

The Master: I will let this witness say whether he knows it was in the tax report.

A. That tax report was stamped from the State Tax Department in Albany, and from that report

which Mr. Cremen had shown to me I had fixed the valuation after viewing the property.

The Master: But you cannot tell us now what that property was?

The Witness: I do not remember.

Mr. Chambers: I will bring the tax report.

Q. What was the value for 1907, unimproved?

The Master: I do not think he gave us the figures for 1906.

Mr. Ransom: Well, $335,000, unimproved.

The Master: He did not give us the figure

27635 with improvements.

Q. You did not give us the value with the improvements?

Mr. Ransom: I object to his giving the improvements.

The Master: Objection overruled.

A. $500,000.

Mr. Ransom: He has not shown what the improvements were.

The Master: I am going to take his testimony.

Mr. Ransom: If we can prove by opinion evidence the value of improvements by that method, there is no limit to what—

27636

The Master: But there is a limit as to what the evidence is worth. I will take it.

Mr. Ransom: It is uterly incompetent.

The Master: I am going to let the witness say what was there seven or eight or ten years ago. He says he knows that it was the property described in the tax report, and he says he figured that at so much. I will let him say that.

Mr. Ransom: I think you would apply that also to any engineer.

The Master: No, I probably would not, but this testimony is very unusual testimony. I am going to take it.

Mr. Ransom: Exception.

Q. For 1907?

The Master: In 1907 were the same improvements on there?

The Witness: $335,000 for the unimproved and $500,000 with the improvements thereon, the same improvements.

By Mr. Ransom:

Q. What was the figure you gave over my objection for the 1906 valuation with improvements? 27638

A. $500,000 with the improvements thereon.

Q. And in 1907?

A. In 1907 the same.

By Mr. Chambers:

Q. The same improvements.

A. For 1906 and 1907 the same improvements.

Q. Now 1908.

A. For 1908, $345,000 for the unimproved. Do you want the improved?

Q. Yes, then, the improved?

A. $500,000 with the improvements thereon, the same improvements for both years 27639

Q. 1909?

A. The same valuation as in 1908; $345,000 unimproved and $500,000 with the improvements thereon; the same improvements as in the previous years.

Q. 1910?

A. $365,000 for the unimproved and $500,000 with the improvements thereon; the same improvements that were there in previous years.

Q. 1911?

A. $365,000 with the improvements thereon—that is unimproved, $365,000, and $500,000 with the im-

provements thereon, the same improvements that had been there in previous years.

Q. Were these valuations that you have just testified to in your opinion the full value of that lot and block, improved and unimproved, as you have stated?

Mr. Ransom: Objected to on the grounds already stated.

The Master: Same ruling.

Mr. Ransom: Exception.

A. They were, according to my opinion and judgment.

27641 Q. Lot 5, Block 978. Will you please give me the dimensions of that as it was in 1906?

A. Forty-six feet on Avenue A, the north line 70 feet, and the south line 95 feet, 6 inches.

Q. The other line was an irregular line?

A. An irregular shape.

Q. There was a little jog. Can you give me the dimensions there from the 70-foot line on the easterly side, where it extends out into Block 798? Have you those dimensions?

A. 798 or 978, which?

Q. 978. Can you give me that little leg there (indicating)?

27642 A. I have not got it here. You can get the difference. It is about 25 feet, 6 inches.

Q. It looks just like on this page 6 that I am showing you?

A. Yes, the difference between those two lines is 25 feet, 6 inches. One is 70 feet and the other is 95 feet, 6 inches, which makes a difference of 25 feet 6 inches.

Q. Did you value that lot in 1906?

A. I did.

Q. Without the improvements?

A. I did.

Q. What was the value that you placed upon it for assessment purposes or tax purposes?

A. $13,000.

Q. And did you value it with the improvements?

A. I did.

Q. What improvements were on it?

A. A two-story building, 46 by 70.

Q. What was the valuation you placed upon it with the improvements for 1906?

A. $20,000 with the improvements thereon.

Mr. Ransom: That is over my objection.

The Master: Yes. 27644

Q. And 1907?

Mr. Ransom: It is understood that he is giving a value only to the improvements he has described.

The Master: Yes.

A. $13,000 for the unimproved and $20,000 with the improvements thereon; the same improvements that were there in 1906.

Q. And in 1908?

A. $20,000 for the unimproved and $27,000 with the improvements thereon; the same improvements that were there in 1906 and 1907.

Q. 1909? 27645

A. $20,000 for the unimproved and $27,000 with the improvements thereon; the same improvements that were there in previous years.

Q. 1910?

A. $19,000 for the unimproved and $25,500 with the improvements thereon; the same improvements as in previous years.

Q. 1911?

A. $19,000 for the unimproved and $25,500 with the improvements thereon; the same improvements as were there in previous years.

Q. The improvements you have spoken of—was it the building and contents that were affixed to the realty?

A. It was.

Q. Was there a list of that in the tax report?

A. That I did not take from his report. That I valued myself.

Q. You looked it over, did you?

A. I did.

Q. And measured up the building?

A. I did, 46—

27647 Q. (Interposing.) What is that?

A. 46 by 70.

Q. And are these values that you have just given the full values of that property during those years?

A. They were, according to my—

Q. (Interposing.) In your judgment and opinion?

A. According to my opinion and judgment.

Q. Will you look at Block 979, Lot 1, I would like to have you give me the dimensions on Avenue A that you used in 1906?

A. On Avenue A?

Q. Yes.

A. 197 feet 6 inches.

Q. On East 22nd Street?

27648 A. On East 22nd Street, south side, 594 feet 8 3/4 inches.

Q. On 21st Street?

A. The north side of 21st Street, 751 feet, 3 inches.

Q. What did you say that last was on East 21st Street?

A. 751 feet, 3 inches.

Q. There was a street there, Avenue B extended, was there not?

A. Avenue B is extended up to about the center line of the block. Then Exterior Street ran from the east to the west at that point.

Q. Was there a little triangle on the easterly end of the block between that and Avenue B extended, or was there a lot there called Lot 29, does your record show?

A. There is an angle there, but I have not got what the lot number was.

Q. It may be Lot 27?

A. It may be. I have not got it. I got just a small plot.

Q. What was the distance on Avenue B extended?

A. 112 feet 5 1/4 inches.

Q. Did you take in that little triangle over there? 27650
Is that part of the—

A. (Interposing.) This assessment?

Q. Yes.

A. No.

Q. I wish you would now take a look at the Tax Map and see if your dimensions there are the same as on the Tax Map?

A. 751 feet, 3 inches includes the angle on the east side of the proposed street of Avenue B.

Q. You did not assess the street there, though, extended?

A. No.

Q. What valuation did you place upon that plot 27651
unimproved for 1906, Block 979, Lot 1?

A. $351,000 unimproved.

Q. And did you assess it with the improvements thereon?

A. I did.

Q. What improvements were upon it?

A. There was a two-story building covering the plot.

Q. What did you say it was with the improvements?

A. A two-story building covering the plot. The amount of improvements?

Q. Yes.

Mr. Ransom: I object to his giving the value of the improvements; he has not shown any qualifications.

The Master: Objection overruled.

Mr. Ransom: This is the first suggestion we have had in this case what the improvement on that lot is—a two-story building covering the plot. It is a wonderful description.

The Witness: A two-story brick building covering the plot.

27653 By Mr. Ransom:

Q. You are testifying now as to this whole block?

A. I do.

By Mr. Chambers:

Q. What did you value that with the improvements that you found on there?

A. $542,000 with the improvements thereon.

Q. That was for 1906?

A. 1906.

Q. Did you get your information as to the building or the improvements from the tax reports?

A. I did, and then viewed it, placing my own value

27654 upon it.

Q. In this tax report was a list of the building's contents was there not?

A. As filed in the State Department.

Q. Yes, and you used that?

A. I did.

Q. As the improvements on the lot or plot?

A. Yes.

Mr. Ransom: I object to his leading the witness. He has not stated anything of the sort.

The Master: He has stated it now.

Mr. Ransom: This is such a remarkable proceeding. Here is a great gas plant which he

blandly describes as a two-story brick building covering an entire plot.

The Master: I know that.

Mr. Ransom: He does not say he has been in it, he does not say he knows anything about the machinery in it.

The Master: I know that.

Q. Did you examine it?

A. I did.

Q. Go into it?

A. No.

Q. Look it over? 27656

A. I did.

Mr. Ransom:

Q. From the outside?

The Master: Don't interrupt.

A. I did.

By Mr. Chambers:

Q. And for 1907 what did you value it at, unimproved?

A. $351,000 unimproved, $542,000 with the improvements thereon.

Q. Were the improvements the same as 1906?

A. The same improvements as were there in 1906.

Mr. Ransom: I move to strike out that answer 27657
because it affirmatively appears that the witness did not even go into this plant.

The Master: Motion denied.

Mr. Ransom: Exception.

Q. Now, 1908?

A. $370,000 for the unimproved, $542,000 with the improvements thereon.

Q. And were the improvements the same as 1907?

A. They were.

Q. Now, 1909?

A. $370,000 for the unimproved, $542,000 with the improvements thereon, the same improvements as in 1908.

Q. Now, 1910?

A. $430,000 for the unimproved; $542,000 with the improvements thereon.

Q. And 1911?

A. $430,000 for the unimproved; $542,000 with the improvements thereon.

Q. And these values that you have just given unimproved were the full value of that property, that lot and block, in your opinion, unimproved?

A. According to my opinion and judgment.

Q. And the value of this lot and block improved,
27659 in the years you have given, was the full value?

A. It was.

Q. In your judgment?

A. In my judgment and opinion.

Q. Take Block 987, Lot 37, Mr. Tracey, and tell me the dimensions of that block and lot on Avenue B as it was in 1906?

A. The east side of Avenue B, 184 feet; on the south side of 21st Street each of Avenue B, 77 feet; on the north side of 20th Street east of Avenue B, 88 feet.

Q. I didn't get that. What was the other dimension that you gave after 77 feet?

27660 A. Eighty-eight feet.

Q. On East 20th Street?

A. On East 20th Street.

Q. Have you the tax map there of Block 987, Lot 37? You had better look at that, Mr. Tracey.

The Master: What is the purpose of this proof, Mr. Chambers?

Mr. Chambers: The value of their real property. We are going to prove it right through. They say they have not enjoyed a fair return since the statute took effect. That is their claim throughout. We propose to show from the time

the statute went into effect down to the present minute.

The Master: The question goes back to giving the dimensions of that lot that you appraised in 1906. Let us have that.

Mr. Chambers: He has given that.

The Master: Let us have it again. What were the dimensions of the lot?

The Witness: 184 feet on the east side of Avenue B; 77 feet on the south side of 21st Street; 88 feet on the north side of 20th Street.

The Master: You have looked at the tax map? 27662

A. I have.

The Master: Has that changed your views?

The Witness: It has not; the map does not agree with those dimensions. There has been a change, but I don't know what year that change has taken place.

Q. Can you look that up to make certain?

A. I cannot tell by that, I would have to go into the record of 1906.

Q. What valuation did you place upon that lot and block in 1906?

A. $55,000 unimproved.

Q. And with the improvements? 27663

A. No improvements.

Q. And 1907?

A. $55,000 unimproved, $60,000 in progress, with improvements thereon.

Q. What were those improvements?

A. A small building.

Q. Being erected on it?

A. Yes, sir.

Q. And in 1908?

A. $70,000 unimproved; $82,000 with the building completed.

Q. 1909?

A. $70,000 unimproved; $82,000 with the improvements thereon.

Q. 1910?

A. $75,000 unimproved; $85,000 with the improvements thereon.

Q. 1911?

A. $75,000 unimproved; $85,000 with the improvements thereon.

Q. Now, besides the building and improvements there, there was other property, wasn't there? Did
27665 you find that on the tax report, too, a list of the property?

A. I don't remember any other.

Q. Whether that was there or not, you don't remember?

A. No

Q. Those amounts that you have given, were those the full value of that property in your opinion, improved and unimproved?

A. According to my opinion and judgment.

Q. For those years?

A. For those years.

Q. Now, Block 989, Lot 1, what are your dimen-
27666 sions for that, on Avenue C, how much?

A. 206 feet on Avenue C.

Q. 206 feet, 6 inches, or just 206 feet?

A. 206 feet.

Q. And on East 15th Street?

A. 235 feet.

Q. And on East 16th Street?

A. 235 feet.

Q. The rear?

A. I haven't got the dimensions of the rear. It is 206 feet on Avenue C. I expect it is the same.

Q. It is a straight line?

A. A straight line.

Q. Did you assess that property, Block 989, Lot 1, in the year 1906?

A. I did.

Q. For tax purposes?

A. I did.

Q. What valuation did you place upon it unimproved?

A. $155,000 for the unimproved.

Q. And did you assess it with the improvements thereon?

A. I did.

Q. What improvements were on it? 27668

A One large tank.

Q. You mean a gas holder?

A. Gas holder.

Q. And that is all?

A. That is all.

Q. What valuation did you place upon it with the improvements in 1906?

A. $275,000 with the improvements thereon.

Mr. Ransom: I object to the witness being permitted to testify to the value of a gas holder. He has not shown any qualifications whatever for that purpose.

The Master: Objection overruled. 27669

Mr. Ransom: Exception.

By the Master:

Q. How old a gas holder was that?

A. That was a new gas holder.

Q. Of what capacity?

A. I don't know the capacity now, but I figured it by the capacity.

Q. Did you have any information as to what it cost to put it up?

A. I did.

Q. From whom did you get the information?

A. From the deputy in charge of real estate of corporations, from the records sworn to by the Gas Company.

Mr. Ransom: I object to that statement and move to strike it out, as your Honor has stricken out previous statements of that sort. The witness is under a misapprehension, and that misapprehension should not be permitted to stand in this record. Look at the chain of hearsay He says he consulted some records that Mr. Cremen had, that Mr. Cremen got something from the State Tax Commission—

27671

Mr. Chambers: You are all wrong.

Mr. Ransom: And that the State Tax Commission got something for somebody else. It is an utterly vicious chain of hearsay.

The Master: Motion denied.

Mr. Ransom: Exception.

Q. How did you arrive at the figure for the gas holder? Why did you think it was the value you fixed?

A. After taking into consideration the amounts submitted to me by the deputy in charge of real estate of corporations I figured that tank at the capac-

27672 ity.

Q. How did you figure it?

A. I don't know now, whether it was five cents or seven cents a cubic gallon.

Q. Where did you get that?

A. The rules of the department.

Q. An arbitrary rule given you on which to figure gas holders?

A. The department had formed them rules upon experience

Q. But it was a fixed rule that was given to you?

A. To figure the capacity of that tank, that was the fixed rule.

Q. Once you got the capacity of the tank you multiplied it by five cents or seven cents, whatever it was?

A. Yes, whatever the rule was.

The Master: Strike out the witness's testimony as to what he thought the value was.

By Mr. Chambers:

Q. Did you then put your value upon it?

Mr. Ransom: I object to that.

The Master: Objection sustained. His judgment as to the value of that holder isn't worth anything. He took a standard furnished to 27674
him by his department. I won't take it.

Mr. Chambers: Exception.

The Master: Is that the way you valued all the gas holders?

The Witness: Most of them.

The Master: I won't take his testimony on any of them.

Mr. Ransom: I move to strike out his testimony regarding the other gas holders as to which he has testified.

The Master: I will let it stand with the observation I have made.

Mr. Ransom: I think it should go out. 27675

The Master: It practically does go out.

Mr. Ransom: If it is permitted to stay in there it will be used—

Mr. Chambers: What does he move to strike out?

The Master: All the witness's testimony as to the value of gas holders. I grant the motion.

Mr. Chambers: Nobody can tell where it is.

The Master: I don't know where it is, but I know that testimony is of no use to me.

Q. How about 1907?

A. $155,000 for the unimproved.

Mr. Ransom: I object to his giving the improvements.

The Master: Objection sustained as to the improvements.

Mr. Chambers: Exception.

Q. 1908?

A. $155,000 for the unimproved.

Q. How much for the improvements?

Mr. Ransom: I object to that.

The Master: Objection sustained.

27677 Mr. Chambers: Exception.

Q. Now, 1909?

A. $155,000 for the unimproved.

Q. How much for the improvements?

Mr. Ransom: I object to that on the same grounds.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, 1910?

A. $155,000 for the unimproved.

Q. How much for the improvements?

Mr. Ransom: I object to that on the same grounds.

27678 The Master: Same ruling.

Mr. Chambers: Exception.

Q. 1911?

A. $155,000 for the unimproved.

Q. How much for the improvements?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

By the Master:

Q. Let me ask you, Mr. Tracey, in valuing the buildings which you have valued, did you have a standard furnished by the department?

A. I took into consideration sales, rental, offering prices and refusals and appraisals.

Q. I am talking about improvements?

A. I am talking about improvements too.

Q. How about the buildings?

A. I took into consideration the condition of the building and the neighborhood.

Q. You didn't have a standard furnished to you by the department as you had in the case of the holders?

A. Based upon the income, based upon the value of the land, and the income, provided the income remained stable if properly managed. 27680

Q. Take one of these gas manufacturing plants, how did you figure that?

A. The retorts?

Q. Well, there was a two-story building covering the whole block, you said?

A. I figured that from the income that could be brought from it if properly rented.

Q. For what?

A. For any purpose that the neighborhood would be suited for.

Q. How much a square foot?

A. It all depends on the character of the building. 27681

Q. How much did you figure for this two-story building that covered the entire block?

Mr. Ransom: Block 971, Lot 1.

A. Two dollars a square foot in 1906 and 1907, $2.20 a square foot for 1908 and 1909; $2.60 a square foot for 1910 and 1911.

Q. That is for general manufacturing purposes?

A. For its use.

Mr. Ransom: He still has not answered your Honor's question, whether he took these figures from what was furnished—

Q. Did you take those from a schedule?

A. I took them from my own mind, and the condition of the neighborhood.

Q. It is not a schedule given to you by the department?

A. No.

By Mr. Ransom:

Q. Didn't they give you a scale?

A. No.

By Mr. Chambers:

Q. Now, Lot 1, Block 989, was that the full value
27683 of that block and lot for those years, in your judgment?

A. It was.

Q. Block 981, Lot 1, have you that divided into two parcels, Parcel 1 and Parcel 2, or have you a parcel to the east of that lot?

A. I have nothing east of that, only what this Lot 1 covers, 235 feet on East 15th Street and 235 feet on East 16th Street.

Q. Now, Mr. Tracey, will you turn to Block 1642, Lot 32?

A. I haven't got it.

Q. Have you got Lot 32 in Block 1642?

27684 A. I haven't got anything in that block.

Q. Have you got any others there, Mr. Tracey? What others have you got?

A. Block 870, Lots Nos. 49 to 60. It should have been 48 to 60.

Q. What block?

A. 870.

Q. Lot 60, have you got that?

A. I have.

Q. What dimensions have you for that?

A. 25 by 92.

Q. What years did you assess that?

A. 1906 to 1914.

Q. Now, in 1906, what assessment did you place upon that lot, unimproved?

A. $51,500.

Q. Did you assess it with the improvements thereon?

A. I did.

Q. What was on it?

A. Five-story building, 25 by 50, and an extension.

Q. What valuation did you put upon the lot with the improvements? 27686

Mr. Ransom: I object to that as incompetent, no sufficient description of the property on which he is giving expert testimony, and that the qualifications of the witness to answer as to this property have not been in any way shown.

The Master: What kind of a building?

The Witness: Brick building.

The Master: Was it a tenement house or a factory, or what?

The Witness: That was a private dwelling, two-family, adjoining the gas company's office.

The Master: Objection overruled.

Mr. Ransom: Exception. 27687

A. $40,000 with the improvements thereon.

Q. And in 1907, unimproved?

A. $31,500; $40,000 with the improvements thereon.

Q. The same improvements?

A. The same improvements.

Mr. Ransom: What has this got to do with this case?

The Master: I don't know.

Mr. Ransom: This is not even property which was owned at that time, as I recall it. When did the company acquire it?

Mr. Alrich: In 1913.

Mr. Ransom: They are asking for 1906 to 1914—

Mr. O'Brien: Wait a minute, Judge, don't be making these haphazard statements on your inquiry made across the room to Mr. Alrich. We have found Mr. Alrich to be very fallible. Now, you look into it before you make these statements. You have gone far enough with this breezy talk this afternoon. It is about as accurate as your reference to the record that you made the other
27689 day about the city tests.

Mr. Ransom: Well, then, it is 100 per cent accurate. I object to it on the ground that it does not appear, with respect to this property down to 1913, that it had anything to do with this company or this case.

The Master: Well, it can't do any harm.

Q. 1907?

A. 1907, $31,500 for the unimproved; $40,000 with the improvements.

Q. Same improvement?

A. Same improvement that was there in 1906.

Q. And 1908?

27690 A. $31,500 unimproved; $40,000 with the improvements thereon.

Q. And in 1909?

A. $31,500 unimproved; $40,000 with the improvements thereon.

Q. The same improvement?

A. Same improvement.

Q. And 1910?

A. $32,000 unimproved; $40,000 with the improvements thereon.

Q. And in 1911?

A. $37,500 unimproved; $40,000 with the improvements thereon.

Q. 1912?

A. $40,000 unimproved; $42,500 with the improvements thereon.

Q. Same improvements in all these years?

A. Same improvements in all these years.

Q. Now, in 1912, that was the value of the property on July 1, 1912, wasn't it?

A. We began to assess in July.

Q. It was some time in July?

A. We began to assess in July and the books opened for that one year on the first day of October.

Q. Would it be October 1st? 27692

A. October 1st.

Q. That was the value, then as of July 1, 1912, the 1912 value you have given me?

A. We began to assess July 1st, and the books opened on the 1st of October.

Q. That would be the value of when?

A. The 1st of October.

Q. 1913?

A. $40,000 for the unimproved and $42,500 with the improvements thereon.

Q. Same improvements?

A. Same improvements.

Q. That was as of October 1st? 27693

A. As of October 1st.

Q. In 1914?

A. 1914 there came a change. Lot No. 59 was merged with Lot No. 6.

Q. And what was the dimensions of the two merged lots?

A. 74 feet by 92 feet.

Q. And what valuation did you place upon those two as merged?

A. $190,000.

Q. Unimproved?

A. Unimproved.

Q. And with improvements?

A. $190,000 P —a new building was in progress for that year's assessment, 1914.

Q. Is that as far as you go with this?

A. That is as far as I went.

Q. You were taken off that district?

A. I was.

Q. These values that you have given unimproved for this property, was that the full value of it, in your opinion and judgment?

A. It was.

27695 Q. And the full value of that property with the improvements on it?

A. It was.

Q. Now, Lot 59, did you assess that lot in 1906 for taxes?

A. I did.

Q. And what were the dimensions of it as it existed in 1906?

A. 59 x 92.

Q. The 59 being on Irving Place?

A. Ninety-two feet on 15th Street.

Q. What value did you place upon it in 1906 unimproved?

27696 A. $95,000 for unimproved.

Q. And improved?

A. $135,000 with the improvements thereon.

Mr. Ransom: I object to it.

Q. What improvements were on it?

Mr. Ransom: I object to it, he has not shown anything about what the improvements were.

The Master: He is asking him now.

Q. What improvements were on it that you valued at that time?

A. There was a 3-story brick building occupied by the Gas Company for offices.

Q. And did you examine the building before you placed a value upon it?

A. I did.

Q. And in 1907 what valuation did you place upon that lot and block?

A. $95,000 for the unimproved and $135,000 with the improvements on it.

Q. The same improvements as in 1906?

A. Same improvements.

Q. And in 1908?

A. 1908 same valuation for both unimproved and improved.

27698

Mr. Ransom: I object to his testifying with respect to the improved value. He has not shown any ability to testify with respect to the value of this building for tax purposes or anything else.

The Master: Objection overruled.

Mr. Ransom: Exception. He has not described the building.

Q. 1909?

A. $95,000 for the unimproved and $135,000 with the improvements thereon.

Q. Same improvements?

A. Same improvements as the previous years.

Q. And 1910?

27699

A. $95,000 for the unimproved and $135,000 with the improvements thereon.

Q. 1911?

A. $110,000 for the unimproved and $125,000 with the improvements thereon.

Q. 1912?

A. $140,000 for the unimproved and $155,000 with the improvements thereon.

Q. The same improvements right along down to that?

A. Same improvements.

Q. Now, 1913 improved and unimproved?

A. Unimproved $140,000 and $155,000 with the improvements thereon.

Q. Same improvements?

A. Same improvements.

Q. Now, in 1914, was that the time it was merged with Lot 60?

A. For the tax year 1914 Lot 59 was merged with 60, which I gave the valuation of.

Q. Now, this valuation that you have given as to the unimproved, was that the full value of that prop-
27701 erty, in your judgment, during those years?

A. It was.

Q. And then the valuation you gave with the improvements thereon, was that the full value of that property, in your opinion and judgment, during those years?

A. It was.

Q. And that is as far as you go with Lot 59, isn't it?

A. It is.

Q. When it merged with Lot 60?

A. Yes.

Q. Now, Lot 56, did you assess that lot in 1906?

27702 A. I did.

Q. What were the dimensions as they existed of that lot?

A. 50 x 84.

Q. The 50 feet was on East 15th Street, and the 84 feet being the depth, is that right?

A. There came a change there. I will have to view the map.

Q. Would that be in this book?

A. That would be in the 870 Block.

Mr. O'Brien: Your Honor, I would request that we suspend at this time. Mr. Tracey has to

get a train, he lives in the suburbs of the city, and his wife is ill, and I think we having begun at half-past nine, have done a pretty full day's work on the case.

The Master: No, we will go ahead until we finish with Mr. Tracey.

Mr. Chambers: I cannot finish with him tonight, your Honor. I am going to call him back for the tax report.

Mr. O'Brien: I may say we have brought witnesses enough so that we will not waste a minute, and I think the record bears out the fact 27704
that it is a more complete one than we have had in the case so far. I notice Mr. Vilas getting uneasy. I do not want him to miss his train out of town.

Mr. Vilas: Don't worry about me. My trains run until midnight.

Q. Now, the 50 feet was the front and rear?

A. And the 84 feet the depth.

Q. And the 84 feet was the depth?

A. It was.

Q. Now, did you assess that, Mr. Tracey, in 1906, for tax purposes?

A. I did. 27705

Q. What valuation did you place upon that lot?

A. $39,000 for the unimproved and $44,000 with the improvements on it.

Mr. Ransom: I object. He has not stated anything about improvements.

Q. What improvements?

The Master: I will take it.

Q. What improvements were on this lot?

A. A 4-story building, 25 x 45.

Q. Did you examine the building?

A. I did.

Q. After such examination you fixed that valuation?

A. I did.

Q. That is the value of that land and improvements?

A. I fixed only a nominal value on the building.

Q. Why did you do that?

A. The neighborhood was beginning to change from a residental to a commercial section.

Q. And was that the full value of it though, in your opinion?

27707 Mr. Ransom: I object to it; he has not shown any particular qualifications.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. It was.

Q. Now, in 1907, same improvements?

A. Same improvements.

Q. What did you value it unimproved?

A. $39,000.

Q. And with improvements?

A. $45,000.

Q. 1908?

A. $41,000 unimproved, $45,000 total.

27708 Q. 1909?

A. $41,000 unimproved, $45,000 for the total.

Q. Same improvements on it in 1908 and 1909?

A. There was.

Q. As in previous years.

A. There was.

Q. 1910?

A. $41,000 for the unimproved, $45,000 with the improvements thereon.

Q. 1911 the lot changed, didn't it?

A. In 1911 it changed, Lot No. 54 was merged with Lot No. 56, 54 was a 13-foot 6 inch x 84 foot

lot, making the total of the plot for 1911, 63 feet 6 inches x 84 feet in depth.

Q. What did you value this 56 and 54 in 1911 together?

A. $60,000 unimproved.

Q. And with the improvements?

A. $60,000 with the new building in progress.

Q. And what was it, a new building in the progress of construction?

A. New 12-story office building in the course of construction.

Q. It was an office building, was it? 27710

A. Office building, yes, sir.

Q. And you looked it over, did you, when it was in progress of construction?

A. I did.

Q. Was that the full value of that land unimproved and improved in 1911?

A. No improvements assessed; building in progress.

Q. Now, in 1912?

A. In 1912 unimproved $60,000.

Q. And improvements?

A. $250,000, new building, 12 stories high, was completed for that tax year.

Q. And was that the full value of that property? 27711

A. It was.

Q. For that year, with the improvements and unimproved?

Mr. Ransom (interrupting): The idea that a man can come in here and say a 12-story office building is worth $190,000—where did they get that idea from?

The Master: Well, it is some evidence in the case.

Mr. Ransom: Yes, but I would not think that his testimony merely that a 12-story building is worth $190,000 was competent.

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The Master: I have to consider it in the light of the actual cost of construction, haven't I?

Q. Now, the 1913?

A. $60,000 for the unimproved and $250,000 with the improvements thereon.

Q. That is still the two lots merged?

A. The two lots merged.

Q. Since 1911?

A. Yes.

Q. Now, 1914?

A. 1914 the unimproved $75,000, with the improve-
27713 ments $300,000, in progress. What caused the progress for that year, they built six additional stories upon the twelve, and that six was in progress during that time while the other part was occupied.

Q. Now, 1915, or is that as far as you go?

A. That was made by another deputy.

Q. Now, these amounts you have given as to Lot 56 separately and then the Lot 54 and 56 merged for the various years, were the amounts you have given the full value of that property, in your judgment and opinion?

A. According to my opinion, it is.

Q. And after they were merged, was the value you
27714 have given the full value of the property improved and unimproved?

A. It was.

The Master: Do you know what it cost them to put up that 12-story building?

The Witness: No, but I know about what it would cost, according to my opinion and my experience in figuring on buildings and cost of construction.

Q. What did you do, Mr. Tracey, take the old building, the first building that was in progress of construction, you stated—what knowledge did you have in regard to the value of that property?

A. My experience for the cost of construction of buildings of that character, I figured it up by cubical contents, and I figured it by the floor space.

Q. Did you keep right up to date on the cost of construction of the kind?

A. I did.

Q. That was your business, you had to?

A. Always.

Q. And using your knowledge and information, you placed this valuation?

A. I did, taking into account sales, if there were similar buildings sold or similar buildings rented, I 27716
could deduct the amount of the building in order to arrive at the value of the land.

Q. You had many other buildings in your territory, I assume, that were under construction?

A. Quite a number of them.

Q. And then later, when they added the story to this building, did you then know, and were you familiar with the cost of construction of that?

A. I was.

Q. Did you take that into consideration?

A. I did.

Q. You knew the prices, did you, in this town for such construction? 27717

Mr. Ransom: I object to it.

The Master: I will take it.

A. I did.

Q. And those matters formed the basis, Mr. Tracey, for your judgment in valuing that building?

A. They did.

Q. You had a vast experience in valuing buildings?

Mr. Ransom: I object to Mr. Chambers continually testifying when interrogating this witness.

The Master: I think that is a leading question.

Mr. Chambers: Well, you seemed to pooh-pooh the knowledge of Mr. Tracey, and I think he is very competent to fix a value on a building.

Q. State generally, Mr. Tracey, for the benefit of Mr. Doubting Thomas what experience you have had in valuing buildings since you first have been with the Tax Department?

A. I have kept records of all sales, I have exchanged views with real estate brokers, appraisers, kept rec-
27719 ords of loans made by savings banks, trust companies and other institutions.

Q. On real property?

A. On real property.

Q. Improved?

A. I have made appraisals, I have testified as an expert, I have acted as a broker and I have sold and bought property in the five boroughs in the City of New York; I have figured, in my consideration of property, on thousands and thousands of buildings in my experience, and I was employed by Jackson & Company to superintend the building of steel construction buildings prior to my service or going into the de-
27720 partment.

Q. How many years were covered by your experience in appraising and all that, that you have just mentioned?

A. Since 1893.

Q. That goes back to 1893, and has been continuous ever since?

A. Yes.

Q. And during that time you have appraised all kinds of differently constructed buildings, haven't you?

A. I have.

Q. Did you use that knowledge and information when you formed your judgment as to the value of these various buildings and improvements which you have testified to?

A. I did.

Mr. Chambers: I think we better suspend. Mr. Tracey's wife is ill.

The Master: Finish with Mr. Tracey.

Mr. Chambers: I am going to call him tomorrow.

The Master: Finish as far as you can go.

Mr. Chambers: I have not the papers here to 27722
finish completely. I am almost done with it.

The Master: What else did you want to ask him?

Mr. Chambers: Tomorrow? I wanted to produce the tax reports.

Mr. Ransom: Are there any other parcels that you want to ask him about?

Mr. Chambers: Some.

The Master: What other parcels?

Mr. Chambers: I want to ask him about another.

Mr. O'Brien: Your Honor, it is now 5:40, and I wanted to evidence, and my fellow counsel for 27723
the defendants want to evidence, a desire to proceed expeditiously with the case, but I think we have covered a lot of ground today.

The Master: If Mr. Chambers has any more parcels he is going to ask him about he can do it now.

Mr. O'Brien: I do not want to register a protest, but I think, your Honor, we ought to be entitled at this time to suspend.

The Master: What do you want to do, suspend until eight o'clock?

Mr. O'Brien: Why, no, I do not see any reason why we should go on after the court hours.

The Master: If you have any other parcels.

Mr. Chambers: Go ahead.

Mr. O'Brien: I want to say, your Honor, that we ought not to be compelled to go on after the eight hours.

Mr. Ransom: The Court said that he was going to go ahead for eight hours a day, and he has not come anywhere near eight hours.

Mr. O'Brien: He is going to do it over our
27725 protest, if he does.

The Master: That is what I am going to do. I am going to sit evenings if I have to.

Mr. Chambers: Mr. Tracey's wife is sick, and I would like to excuse him.

The Master: I know you would. Go ahead.

Q. Take Lot 54, Block 870; in 1906 did you assess that for tax purposes?

A. I did.

Q. And what were the dimensions of that?

A. Thirteen feet 6 inches by 84 feet.

Q. The 13 feet 6 inches being front and rear?

A. On 15th Street.

27726 Q. And the other dimension the depth?

A. Yes.

Q. What valuation did you place upon that Lot 54 for tax purposes in 1906?

A. $9,500 for the unimproved.

Q. Were there improvements on it?

A. There were.

Q. What did they consist of?

A. 13 feet 6 inches by 70 feet 6 inches, a three-story building.

Q. Were you familiar with that building when you placed a value on it?

A. I was.

Q. You did place a value on it?

A. I did.

Q. You examined it?

A. I did.

Q. Then what valuation did you place upon it as a total?

A. $12,000 total.

Mr. Ransom: That is over my objection and exception.

The Master: Yes.

Mr. Ransom: On the grounds previously indicated. There is no description on which any 27728
one could base anything.

The Master: Yes, I take it it was a little private house there, 13 feet 6 by 70 feet; is that right?

The Witness: Yes, that is right.

Q. In 1907 what did you place as the value on that, improved?

A. $10,000 for the unimproved and $12,500 with the improvements thereon.

The Master: That is the same?

The Witness: The same improvements as in 1907—as in 1906.

Q. 1908? 27729

A. $10,500 for the unimproved and $12,500 with the improvements thereon.

The Master: The same improvements?

The Witness: The same improvements. The same figures and the same improvements for 1909 and 1910, if that will help you out.

By the Master:

Q. When was it merged, in 1911?

A. In 1911 it was merged in with 56, which I have already told you about.

The Master: That you have already told us about.

By Mr. Chambers:

Q. You gave me the value of that. Didn't I skip 1909? What was the value of it?

The Master: The witness did not. He said it was the same as in 1908.

The Witness: I helped you along.

The Master: He said it was the same in 1909 and 1910 as in 1908.

Q. And in 1910 the same?

A. Yes.

Q. The same as 1909?

27731 A. 1908, 1909 and 1910 the same value in both.

The Master: And the same improvements during those years?

The Witness: The same improvements.

Q. Did you assess Lot 53 in Block 870 in 1912?

A. I did.

Q. What were the dimensions of that lot?

A. Seventy-four feet 6 inches on 15th Street by 84 feet in depth.

Q. What valuation did you place upon that lot unimproved in 1912?

A. 1907, do you mean?

Mr. Ransom: I object to the question.

27732 Q. Did you assess it in 1906?

A. Yes.

Q. What valuation did you place upon it in 1906?

A. $55,000.

Mr. Ransom: I object to the question. The company did not own it at that time.

The Master: Objection overruled

Mr. Ransom: What is the use of taking a lot of testimony upon it?

The Witness: $55,000 unimproved.

Q. And improved?

A. $55,000 for the total, no improvements.

Q. In 1907?

A. $57,000 for the unimproved and $62,000 with the one-story building on it.

Q. And in 1908?

A. $63,000 for the unimproved and $68,000 with the building on it.

The Master: The same one-story building?

The Witness: The same building.

Q. In 1909?

A. In 1909 $63,000 for the unimproved and $68,000 with the building on it.

Q. In 1910? 27734

A. $65,000 for the unimproved and $70,000 with the building on it, the same building.

Q. In 1911?

A. $76,000 for the unimproved and $83,000 with the buildings on it; the same building.

Q. In 1912?

A. $76,000 for the unimproved and $89,000 with the building on it; the same building.

The Master: The same building?

The Witness: The same building.

Q. 1913?

A. $76,000 for the unimproved and $89,000 with the improvements thereon. 27735

The Master: The same building?

The Witness: The same building.

Q. In 1914?

A. In 1914, that was $171,500 unimproved and $171,500 P, being a new building in progress. That took in Lot numbers 50, 49 and 48, which were merged with it in 1914—merged with Lot No. 53.

The Master: The figure you give is for the plots?

The Witness: Yes, making a total of 102 feet by 84.

Q. Did you assess those?

A. I did.

Q. For how long, to 1914?

A. Up to 1914.

Q. Well, go ahead?

The Master: Those other lots?

The Witness: Those other lots.

The Master: Give us the same information for 1906 down to date, quickly. Give us the improvement on each plot.

Q. I mean the merged lots. Did you assess them?

27737 A. I did.

Q. What was the last date?

A. 1914 was the last year.

Q. You gave me that?

A. Yes, $171,500 unimproved and $171,500 P. which meant a new building in progress.

Q. Take Lot 50, in 1906 what was it?

A. Twenty-two feet by 45 feet, with a four-story building.

Q. What valuation did you place on that?

A. $14,000—

Mr. Ransom: I object to this as wholly immaterial. The company did not own it at this time.

27738 A. (Resumed.) $14,000 unimproved and $18,500 with the improvements thereon.

By the Master:

Q. What kind of improvements?

A. A four-story private dwelling.

Q. Did that continue right through until it was torn down in 1914?

A. It did.

Q. Take Lot 48.

A. That is Lot 50.

Q. Take 49, then.

A. Twenty-two feet by 45, the same kind of a building, four-story and that same condition continued clean down until it was merged.

Q. Until 1914?

A. Yes.

Q. What other lot is there?

A. Lot 48.

Q. What kind of a building is on that?

A. The same kind of a building, 23 feet 6 inches by 84.

Q. That was the same right down?

A. Right through to 1914. 27740

Q. What was the size of that?

A. Twenty-three feet 6 inches by 84 feet.

Mr. Chambers: You are mixing up the record. We do not want 48 at all, and I move to strike it out.

The Master: All right, strike it out. Get 50.

By Mr. Chambers:

Q. You gave us the unimproved?

A. I gave you 48, when I gave you that merged plot.

Q. Did you give me 49 from 1906 down to 1914?

A. No, I gave you the size of the building. 27741

The Master: He did not give you 50, either.

The Witness: The Judge asked me what sort of buildings, and I told him similiar buildings all the way through.

The Master: Give us the improved and unimproved values of buildings on Lot 50.

The Witness: $14,000 unimproved and $18,500 with the improvements thereon in 1906; $15,000 unimproved and $18,500 with the improvements thereon in 1907; $17,000 unimproved and $20,500 in 1908, with the improvements on it. In 1909,

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$17,000 unimproved and $20,500 with the improvements thereon; in 1910, $17,000 unimproved and $20,500 with the improvements thereon; in 1911, $20,000 unimproved and $23,000 with the improvements thereon; in 1912, $20,000 unimproved and $22,000 with the improvements thereon; in 1913, $20,000 unimproved and $22,000 with the improvements thereon.

Q. Were those in your opinion the full values of Lot 50, both the improved and unimproved?

A. They were.

27743 Q. In that time?

A. They were, according to my opinion and judgment.

Q. Will you now take Lot 49?

A. Lot 49, 22 feet by 84 feet, with a building 22 feet by 45 feet, four stories.

The Master: What was the value in 1906?

The Witness: In 1906, $14,000 unimproved.

Q. Just a minute, Mr. Tracey. Lot 49 is here given as a bigger lot than you have.

A. You have 49 and 48 merged together. 47 was merged in 1912. Is it so marked?

Q. Forty-eight and 49 are apparently in one, and

27744 47 is all by itself, where you have 48 there it is 47. Take the Lots 48 and 49 together.

The Master: He has got them separately; he will have to give them to you separately.

Mr. Chambers: All right, give me 49 as you have it.

The Witness: I can give him that.

The Master: You have got to add it up. Give it to him separately.

Q. Go right through from 1906, with the unimproved and improved, as far as you can go, as you have it there?

27745

A. In 1906, $14,000 unimproved and $19,000 with the improvements thereon; 1907, $15,000 unimproved and $19,000 with the improvements thereon; 1908, $17,000 unimproved and $21,000 with the improvements thereon; 1909, $17,000 unimproved and $21,000 with the improvements thereon; in 1910, the same values; in 1911, $20,000 unimproved and $23,500 with the improvements thereon. In 1912 and 1913 the same values.

By the Master:

Q. Now, take Lot 48. What is the size of that lot?

27746

A. Twenty-three feet 6 inches x 84 feet, with a building 23 feet 6 x 45 feet, with a four-story building.

Q. What is the value in 1906?

A. $15,000 unimproved and $20,000 with the improvements thereon; in 1907, $16,000 unimproved and $20,000 with the improvements thereon; in 1908, $18,300 unimproved and $22,000 with the improvements thereon. The same for 1909 and 1910. In 1911, $21,500 unimproved and $25,500 with the improvements thereon. In 1912 and 1913 the same values, both improved and unimproved.

Q. Have you got Lot 47?

27747

A. No.

By Mr. Chambers:

Q. Have you got 47 at all?

A. No, I have not here. I have it here (indicating book).

Q. These values that you have given us—

Mr. Ransom: He says he has 47 there.

Q. You have 47?

A. Yes, but I could not give you the land. I could not give you the unimproved from this book; I would

have to take the individual records for each year. But I can give you the total values.

Q. All right, never mind it. The values that you have given for Lot 49, Lot 50 and Lot 53 in Block 870, improved and unimproved, for the times that you have given them for, were those the full values of the properties?

A. According to my opinion and judgment.

Mr. Ransom: This is all over my objection.

The Master: Yes.

Mr. Ransom: Yes, I am objecting to his ef-

27749 forts to testify as to the improvements.

The Master: Are there any other parcels that you want to cover?

Mr. Chambers: Yes.

The Master: The witness states that as to all other parcels he was examined on the record for the complainant, but he was not examined as to improvements.

Mr. Chambers: But not for 1906.

The Witness: I did not assess them in 1906. There was only one year that I have any others that you are interested in, which was in Section 4, on which I gave testimony at the last hearing,

27750 and was cross-examined afterwards.

The Master: You were not asked as to the value of the improvements.

The Witness: Not as to the improvements.

Q. Which block is that? Here is Block 1177, Lot 21.

A. That is what I refer to. That is one.

Q. When did you begin to assess that?

A. One year, 1919.

Q. And you have already given the assessed value for the complainant?

A. I gave that.

27751

Q. What improvements were on that?

A. I do not remember now. The valuations were based upon the units. I was questioned as to what units I used on the different streets at that time and I gave those units and the plottage.

Q. I did not get what your—

The Master: He does not know what improvements there were.

The Witness: I do not remember now what improvements were on it, but I gave that information during the last hearing as to the valuation of the unimproved.

27752

Q. What was the value of that with the improvements on it?

A. I have not got it.

Q. You can get it, can you not?

A. Oh, I can get it.

Q. Well, we will want that.

A. You will have to give me some time, though.

Q. Take 1157.

A. The same conditions.

Q. That is, you cannot give me the—

A. (Interposing.) Not just now, no. 1157, Lot No. 1.

27753

Q. How big a piece of property is your Lot No. 1 on West 65th Street?

A. 800 feet on 66th and 800 feet on 65th Street. That I can give you.

Q. Can you take that lot—you gave the value before, didn't you, of that whole lot?

A. I did.

Q. Unimproved?

A. I did.

Q. Now, I wish you would take that lot—can you do it now—and give me the assessed valuation of that portion of it? Well, it would be on West End

Avenue, and 500 feet on West 65th Street, also 500 feet there. In other words, we cut off 300 feet here, do you see (indicating)? Now, you do that.

Mr. Ransom: I object to the question. There is not any such animal as an assessment on that area. There has never been any assessment of that area.

Mr. Chambers: We are going to ask him to—

Mr. Ransom: Give the assessed value of that portion? There is not any.

The Master: I think the witness gave in de-
27755 tail in his units what he figured that 500 feet at.

The Witness: I did. I gave the assessment of the unimproved for 1919 on that parcel as $815,000.

By the Master:

Q. Not for that 500 feet?

A. For that 800 feet.

Q. But you gave the unit showing how you figured it on West End Avenue and how you figured the plots on the side streets there.

A. I did.

Q. So that Mr. Chambers can figure it very easily.

27756 A. I did.

By Mr. Chambers:

Q. Can you give us that in the morning?

A. I want some sleep, Mr. Chambers. I have been three days on it now.

Q. Can't you do that on the stand in the morning.

A. Yes, but you want other information as to 1906, the improvements and those things.

Q. Yes, I know how crowded you have been.

Mr. Ransom: You have certainly kept him busy.

27757

Mr. O'Brien: I might state at this time, so that you will know the conditions under which you are working, that a great many hearings are set in the Tax Department.

The Master: Well, let us go to something else. I do not think this is of such great importance.

Mr. O'Brien: I state that so you will see that we have brought the data here, and we got the witnesses, but we would like to make the hours reasonable.

The Master: The reasonable hours will be half-past nine to six, and if I find we are not making the headway that we should make, it will be from eight to eleven also. 27758

Adjourned to Tuesday, January 6, 1920, at 9:30 o'clock A. M.

Last Complainant's Exhibit 411.
Last Defendants' Exhibit AA47 for identification.

27759

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 27763

Before ABRAHAM S. GILBERT, Special Master.

New York, January 6, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 27764
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Chambers: Before we begin I want to record my protest on the record against going on from 9:30 to 6 o'clock, with an hour for luncheon, because I find—I have been thinking it over carefully—that I am unable to do justice to the case with those long hours.

Mr. Ransom: May the record show that, although we have all been here, we have been waiting for Mr. Chambers to prepare for trial, and that it is now practically 9:45 instead of 9:30. 27765

The Master: Proceed, Mr. Chambers. The protest is noted.

Mr. Ransom: Also my protest.

Mr. Chambers: I want to say in answer to that, that a good many times you started late.

27766

Mr. Ransom: Except when I was waiting for you, I did not.

Mr. O'Brien: Yes, and waiting for Mr. Carter and other officers or members of the Consolidated Gas Company suiting their convenience. That has been done for six months.

Mr. Chambers: Now I am going to ask that the minutes show—

Mr. O'Brien: Pulling off witnesses and putting them on again; waiting until the Board of Directors delivered up Mr. Carter from their Tuesday meetings.

27767

Mr. Chambers: I think we at least ought to conform to the regular court hours in this district. I am going to ask that the minutes record the time that the case begins and when it closes.

Mr. Ransom: I join in that request.

Mr. Chambers: It closed at least after six o'clock last night, and it does not give us time to protect our clients.

The Master: I repeat what I said before, that unless this case shows progress very quickly I shall have to hold evening sessions.

Mr. O'Brien: Well, I doubt whether you have any power and that will be tested, your Honor, if you hold evening sessions. There is no power in any court to compel men to work until close to midnight, twelve to fifteen hours, with the elevators stopped and the steam off.

27768

Mr. Chambers: When that time arrives I shall protest.

Mr. O'Brien: If your Honor makes that direction now I will review the whole record of the case with regard to the accommodations made for the Master, as well as for the counsel and the officers of the Consolidated Gas Company.

The Master: Proceed, Mr. Chambers, if you have anything.

JOHN F. TRACEY, resumed the stand.

DIRECT-EXAMINATION CONTINUED BY MR. CHAMBERS:

Q. Mr. Tracey, go back to Block 951, Lot 35. Will you just turn to that?

A. I can.

Q. Did you use the tax report for any of the information in regard to the improvements on that lot?

A. Not on that parcel.

Q. On that parcel?

A. No, sir.

The Master: I will not allow that cross-examination. What parcels did you use? Tell Mr. Chambers which parcels you did use. 27770

Q. Reversing and going back from yesterday, the next parcel that I asked you about, Block 952—

The Master: I will not permit that examination, I said. I will let the witness state which was the first parcel examined by him, on which he used the tax reports.

A. On all the parcels—

The Master: Which was the first one, Mr. Tracey; you know.

The Witness: I do not know the first one.

The Master: Then give us the first you have.

The Witness: Block 952, Lot 7. 27771

Q. You used the tax report?

A. I used it, or had it under consideration.

Q. For 1906, 1907 and 1908?

A. Yes.

Q. I show you tax report of the company for 1906—well, I will first show you it for 1907. I show you the tax report for 1907. Can you show me in that tax report the list of the property on that lot which you used?

Mr. Ransom: I object to the question. He is endeavoring to contradict his own witness. The

witness described what property he valued or what property he gave an opinion about or testimony concerning.

The Master: I will let the witness state.

Mr. Ransom: Exception. Here, your Honor, yesterday the witness described the properties concerning which he was asked to give opinion testimony, and now they endeavor to contradict him by endeavoring to have him read from some document—

The Master: They have not asked him to read

27773 anything yet.

A. I cannot tell from that whether I ever used that report at all.

Q. Do you find the list of the personal property in there—or the property?

A. No.

Q. In Schedule S that you spoke of?

A. No, not that I ever saw before.

Q. Look at the tax report, the original tax report for 1908, and see if you find it in that, for that lot and block number?

Mr. Ransom: I object to the question. It has not appeared that this witness ever saw these

27774 reports before.

The Master: Objection overruled.

Mr. Ransom: It has not appeared that this witness ever saw these reports before. From what was testified to yesterday it appeared affirmatively that he had not.

A. There is nothing in that that I can refresh my memory on that I ever saw that before.

Q. What you did have were the returns to the Tax Commission?

Mr. Ransom: I object to the question.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Will you look at the 1909 report, Mr. Tracey, and see if you can find the property?

The Master: What is the point, Mr. Chambers—that this witness is in error about his getting it from the tax report?

Mr. Chambers: No, I am going to offer in evidence these data.

Mr. Ransom: It does not appear that he ever saw these before.

The Master: Now, there were two reports that did not have anything in them. Has this 27776
report anything in it?

Mr. Chambers: I do not know. I just asked him if he used the tax report, and you ruled it out. He said yesterday that he did.

The Master: I did not rule it out. You asked him a leading question. You said, "You did use a statement of the Tax Commissioners," or something to that effect, and I ruled it out.

Mr. Chambers: Counsel did not object.

Mr. Ransom: I did object.

Mr. Chambers: Counsel did not object on the ground it was leading. That is very technical.

The Master: I ruled it out. 27777

Mr. Chambers: Very well, the Master is holding me down to such technicalities, I will ask this:

Q. What report did you use, if any?

A. Reports submitted to me by Mr. Cremen, which had the lot and block number on, showing the value as filed in the State Department.

By the Master:

Q. How do you know what value was shown on the tax reports?

A. Mr. Cremen's had the stamp of the State Department and said that he had taken—

Q. That is the value fixed by the State Department?

A. No, he had taken them from the record fixed by the State Department.

Q. So he told you?

A. The board sends them out to him.

Mr. Ransom: It is purely hearsay, as I pointed out yesterday

Mr. O'Brien: Your Honor, it is not hearsay when it is the policy of a public department. It has a fixed policy as to taking the statements made by the company itself on certain values of their

27779 property.

The Master: Where is that statement?

Mr. O'Brien: In the last three or four years.

The Master: Where is that statement?

Mr. O'Brien: That is taken from the—

By Mr. Chambers:

Q. Where is the statement now?

Mr. O'Brien: Just a minute, Mr. Chambers, if you please.

A. I do not know.

Mr. O'Brien: Mr. Cremen, who at that time was in charge of that particular work, real estate of corporations is dead. We will produce Mr.

27780 Bell, the head of the department who has been there for many generations, to show the practice and the policy of the department at that time.

Mr. Ransom: That will not make hearsay testimony competent.

The Master: You won't show it to me.

Mr. O'Brien: Well, your Honor, there are two phases of the witness's testimony.

The Master: There is only one phase.

Mr. O'Brien: There are two phases of the witness's testimony, one is to prove what the Department of Taxes in the city, in the various years assessed the improvements at and the land.

at; the other phase of the witness's testimony is that of an expert. Now the testimony of the witness is designed to bring out the assessment made from year to year of improvements, and is certainly admissible, because wherever they got the information it is an official act. It has stood there, and presumably without objection on the part of the complainant company, during those years. As to later years, the Schedule S of the report to the State Tax Department is adopted, used as a basis of the assessments made upon plant and equipment and those parts of the im- 27782
provements that are not buildings.

The Master: Do you find that list of property there, Mr. Tracey?

The Witness: Referring to the lot and block number here, but nothing more that I can refer to as the value of the property in this report.

Q. The improvements, I mean.

A. Nothing that I can distinguish as to what the amount in this book represents on this lot and block number that you have in question.

Q. Where are these statements that you consulted?

A. I do not know. It is fourteen years ago since I saw them.

27783

Q. In the department?

A. They may be in the custody of Mr. Howe.

Q. Mr. Howe?

A. Mr. Howe, who succeeded Mr. Cremen.

Q. Is he there now?

A. Yes. Or Mr. Bell, who is the Chief Deputy of the Real Estate Bureau, has jurdisdiction probably over all of those, but I have no jurisidiction over them and never had jurisdiction over them.

Q. Can you describe more in detail those papers that you used, the list of the improvements on these pieces of property?

Mr. Ransom: Objected to as immaterial. It is quite immaterial. It appears they are purely hearsay; they are something that someone apparently in the Tax Commission made up and sent to someone in the Tax Department, who gave them to someone else in the Tax Department, who showed them to this witness.

The Master: I will let the witness state.

Mr. Ransom: The house that Jack built has nothing on this method of proof.

The Master: Objection overruled.

27785 Mr. Ransom: Exception.

A. I do not remember what amounts were on those reports.

The Master: No, can you describe any more in detail what these papers were that you had?

The Witness: No.

Q. Did you look up, Mr. Tracey, further after we closed at six o'clock last night, as to block 979, lot 1?

A. Block 979, lot 1?

Q. Yes.

A. No.

Q. Where the Avenue B cuts through the easterly end of it?

A. No.

27786 Q. Block 987, lot 37?

A. No.

Q. You did not have time, did you?

A. Positively, no. I did not get home until eight o'clock.

Q. Now, Mr. Tracey, will you take block 1157, lot 1. Now, will you give me—did you assess that, and if so, what year?

A. 1919.

Q. And will you give me the assessed valuation that you placed upon that block and lot for that year, with the improvements thereon?

Mr. Ransom: I object to it. It does not appear from the testimony of this witness that he knows anything about improvements, they have not been described, wholly incompetent, irrelevant and immaterial.

The Master: I will sustain the objection unless the witness describes them.

Q. What improvements were on that?

A. One large gas tank and two small buildings.

Q. And then what valuation did you place upon it with those improvements?

Mr. Ransom: Objected to. 27788

The Master: So far as the gas holder is concerned, did you value that gas holder in the way you have told us by the cubical contents?

The Witness: I did.

The Master: On the basis given you by the Department?

The Witness: I did.

The Master: Objection sustained as to the gas holder.

Q. Now, the buildings excluding the gas holder.

A. The value of the buildings?

Q. Yes.

A. $35,000. 27789

The Master: Excluding the gas holder?

The Witness: That is excluding the gas holder.

Q. And that is everything on that lot in the way of improvements, with the exception of the gas holder?

Mr. Ransom: Objected to. He has not said that. He said he valued the building.

Mr. Chambers: I am asking that.

Mr. Ransom: You haven't a right to cross-examine your own witness in any such way as that.

The Master: Don't let us fuss so much about cross-examining the witness. That $35,000 represents what, Mr. Tracey?

The Witness: The buildings separate from the gas tanks.

The Master: Just the buildings?

The Witness: Just the buildings.

Q. For the entire block?

A. For the entire block.

Q. All the improvements on the entire block?

Mr. Ransom: Objected to.

27791 The Master: Objection sustained. He said the buildings, not all the improvements. The buildings.

Q. Now, does that assessment include all improvements on that entire block, with the exception of the gas holder?

Mr. Ransom: Objection on the ground already indicated, highly incompetent, reprehensible.

The Master: Objection sustained.

Q. What improvement is included in that valuation you have just given?

Mr. Ransom: Objected to, fully covered, already answered.

27792 The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you examine the buildings?

A. I did.

Q. How many of them were there?

A. There were two.

Q. And what kind of buildings were they?

A. One was an engine, and the other was an outhouse, sort of a governors room, as I remember it.

The Master: Engine house, you mean, and governor house?

The Witness: Yes, sir.

Q. What data did you use in fixing the valuation of those buildings?

A. As I remember, I figured out the square foot area of the building and applied a suitable factor, what I thought was suitable according to the conditions of the buildings, to bring out the value of the cost of reproduction.

Q. And were you familiar with those kinds of buildings?

A. I was.

Q. And have you been for a number of years?

A. I was. 27794

Q. And was the value you placed upon them the full value?

A. According to my opinion and judgment.

Q. Did you include anything except the buildings themselves?

Mr. Ransom: Objected to, fully covered.

The Master: I will let him answer that.

Q. What did you include, if anything, except the bare building?

A. The engines.

Q. The engines themselves?

A. Yes, sir.

By the Master: 27795

Q. What do you mean, the engines?

A. The engine and the engine pump in part of this building.

Q. You took that as part of the building?

A. Yes, sir.

Q. How many engines and pumps have you bought and sold?

A. I have not bought and sold any.

Q. Where did you get your value on them?

A. From engineers.

Q. You asked somebody else?

A. Asked engineers what the cost of an engine or pump might be, according to the capacity.

Q. What engineers?

A. Different engineers for the last twenty years.

Mr. Ransom: I move to strike out the $35,000 figure as incompetent.

The Master: Motion granted.

Mr. Chambers: Exception.

By Mr. Chambers:

Q. Had you made a study of the valuation of engines in that way?

27797 A. In that way, yes.

Q. By making inquiries?

A. Yes, sir.

Q. And had you valued other engines?

A. I have.

Q. Covering a period of years back?

A. Twenty years or more.

Q. And engines of that type and style?

Mr. Ransom: Objected to, it does not appear he knows anything about the type or style.

The Master: I will let the witness answer these questions.

Mr. Ransom: Besides making a protracted
27798 cross-examination, letting this utterly futile testimony in.

The Master: It does not mean anything of the sort. The witness has already stated he gets his information from what other people have told him.

Mr. Ransom: About engines.

The Master: All right.

Mr. Ransom: And it does not appear that he knows anything about engines?

The Master: And I have already so ruled, but Mr. Chambers wants to make his record and I will let him do it.

27799

Q. Aside from ascertaining what you have already stated with regard to these engines, did you make any other inquiry, or did you have any other knowledge on which you based your valuation?

A. None.

Q. Did you find out from your inquiries what the market price was of such engines?

Mr. Ransom: Objected to. On the witness's statement it does not appear that he knows.

The Master: I will sustain it. I will let the witness state what knowledge he has.

27800

Q. Now, state fully, Mr. Tracey, what knowledge you had and where you got it?

A. Conversing with different engineers of different buildings that I had cause to go into, the cost of what an engine or what a boiler or any plant might cost, so that in case I needed it at any time, I could use it for the purpose of assessing.

Q. Did you look up the cost of engines?

A. I did not.

Mr. Ransom: Objected to.

Q. Did you have some memorandum or data that you gathered together as to the cost of engines?

A. None other than what engineers gave me.

27801

Q. Now, I ask you—

The Master (interrupting): Ridiculous to ask a man who is a real estate man, whose business has been that of real estate, what the value of engines is. The City of New York ought to have some one who knows something about it. Of course he gets the best information he can and base his assessment on it, but it won't do in a lawsuit.

Mr. Chambers: I do not agree with you on that. Of course I except to your Honor's statement.

27803 John F. Tracey, Direct.

Q. I ask you now again what valuation you placed upon the buildings with the engines?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: It is already in the record anyhow.

Q. Now, Mr. Tracey, can you give me the valuation of the land of Lot 1, Block 1157, using only that portion of it which is bounded by West End Avenue and running easterly 500 feet?

27804 Mr. Ransom: Objected to on the ground there never has been any such valuation, it is purely mythical and hypothetical.

The Master: I shall permit this witness to state, because he said he valued that entire plot, in view of certain values on West End Avenue and certain values on certain of the side streets, at certain figures, and I will let him state what those figures would represent for the 500 feet.

Mr. Ransom: Exception.

The Master: Perfectly proper.

A. The proportionate share of that tax of $815,000 is what you refer to?

27802 Q. Yes.

The Master: The land value.

Q. The land value.

A. The land value, that proportionate share running from West End Avenue 500 feet east by 200 feet 10 inches on West End Avenue, the proportionate share of that $815,000 would be $466,600. Do you want the east part?

The Master: Well, the balance is the east part.

The Witness: $348,400.

Mr. Ransom: I move to strike out the answer on the ground that it appears that the witness

never did any such thing in the course of his official duties, there never was any such assessment or any such valuation made.

The Master: Motion denied.

Mr. Ransom: Exception.

Q. And that value that you have just given for that portion of that lot and block 500 feet by 200 feet 10 inches, being the westerly portion of the lot and block, is that, in your judgment, the full value of that portion of the lot and block?

Mr. Ransom: Objected to, there isn't any such assessment. 27806

A. Of the land?

Q. The unimproved land?

Mr. Ransom: There is no such assessment.

The Master: Have you an objection?

Mr. Ransom: I have.

The Master: Make it.

Mr. Ransom: I object on the ground there is no such assessment, and no such valuation ever made, it is not anything to which the statutory standard applies or which comes within the rule under which these assessments have been proven.

The Master: Objection overruled.

Mr. Ransom: Exception. 27807

A. It is the value in my opinion under ordinary circumstances.

The Master: Full value.

The Witness: Full value.

Q. Will you turn to Block 1177, Lot 21, you assessed that lot, did you?

A. I did, for 1919 tax.

Q. You have already given the valuation of that unimproved.

A. I have.

27808 John F. Tracey, Direct.

Q. Did you assess that lot and block with the improvements thereon for 1919?

A. I did.

Q. What improvements did you find on it?

A. One building 90x70, two stories, a stable 38x23, one story, a 50x40 one-story office, 96x16 one-story, 40x25, one-story, a garage and shed. I placed a nominal value upon those buildings of $25,000.

The Master: Why a nominal amount?

The Witness: Because they were obsolete.

Mr. Ransom: Because they were what?

27809 The Witness: Obsolete.

Q. In your judgment and opinion, was that amount of $25,000 the full value of those buildings as you observed them when you visited them in 1919?

Mr. Ransom: Objected to on the grounds already indicated.

The Master: Objection overruled.

A. It was.

Mr. Ransom: I move to strike out the characterization of these buildings as obsolete, as not in any way qualified.

The Master: Motion denied. It was in answer to my question why he put a nominal value
27810 on them, and he said because they were obsolete. It is his opinion and his judgment.

Mr. Ransom: Exception.

Q. I do not think I asked you if you examined the buildings.

A. I did.

Q. And you made your examination in 1919?

A. I made it 1918 for 1919.

Q. The next one I call your attention to is Block 1092. What dimensions have you for that lot?

The Master: It seems to me he has given us all those dimensions. We have all those dimensions.

The Witness: I gave them in the last examination.

The Master: I won't allow the question.

Mr. Chambers: Well, I don't know whether you have them correctly or not.

The Master: They are in the record.

Mr. Chambers: I think there might be some mistake about it. We cut some of this out.

Q. Now, what is your dimensions on West 45th Street, Block 1092, which would be Lot No. 7. Now, what are your dimensions for that lot?

The Master: Haven't we had that? 27812

Mr. Ransom: That has already been gone over at great length.

Mr. Chambers: I do not think so.

The Master: I won't allow it, it is a waste of time.

Mr. Chambers: Well, then, we can't do anything if we can't have this identified.

The Master: Oh, you have got it identified.

Mr. Chambers: You might as well put us out of court.

The Master: Nonsense. It is in the record.

Mr. Chambers: I haven't got this kind of a lot (indicating). It was cut up. 27813

Mr. Ransom: Maltbie takes some of these things and cuts it up and because the witness does not agree with him, he says he is knocked out of court.

Mr. Chambers: That is pure nonsense. Why don't you say something with some sense to it and some basis of fact for it? I know everything is going your way, but that is no reason to make insulting remarks. You ought to be put in your place, and I hope you will be, and you probably will be before the case is ended, in some other court, perhaps.

27814 John F. Tracey, Direct.

Mr. Ransom: I ask that any questions addressed to the witness be put on the record.

The Master: That is all right. Mr. Chambers is trying to identify his lot.

Q. Did you describe that lot before?

A. I did.

Q. The one you have there?

A. I did.

Q. Now, as you have the lot, as you described it before, what valuation did you place upon it, unimproved, have you given that?

27815 A. I have.

Q. Now, did you assess it with the improvements on it?

A. I did.

Q. And what improvements did you find upon it?

A. Four large gas tanks and an engine house and a few small buildings.

Q. This assessment we are speaking of was for 1919?

A. 1919.

Q. Did you place a valuation upon the tanks?

A. I did.

Q. What cents per cubic foot did you use?

27816 Mr. Ransom: Objected to as immaterial and incompetent.

The Master: I will allow it.

Mr. Ransom: Exception.

The Master: You used the same form of unit, did you?

The Witness: I did.

The Master: And how many cents a cubic foot?

Mr. Ransom: Cubic gallons he testified to yesterday.

The Witness: 5 1/2 cents a cubic foot capacity of the tanks.

The Master: Cubic foot contents he testified to.

Mr. Ransom: Yesterday he testified to a cubic gallon.

The Master: I did not so recall it. I understood him to say cubic foot contents. Whatever it is, I won't allow his testimony on an arbitrary standard set up in the department.

Q. That rate was changed from time to time in the department, I mean it was increased?

A. I only fixed that in one year.

Q. What else did you find on there, an engine house? 27818

A. An engine house and a few small buildings.

Q. And did you examine them?

A. I did.

Q. And what valuation did you place upon those?

The Master: Upon what, now?

Mr. Chambers: The engine house and the small building, excluding the four tanks.

The Master: And excluding the engines and machinery?

The Witness: Including the engine.

The Master: Excluding the engines?

The Witness: No.

The Master: Did you make any value on it ex- 27819
cluding the engines?

The Witness: No.

Q. In your valuation you included the engines in the buildings?

A. Yes.

Q. And what valuation did you place upon the engines and buildings, excluding the four tanks?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained on the ground the witness is not qualified to value engines.

Mr. Chambers: Exception.

Q. And are those all the improvements you found upon the lot and block?

A. They were.

Q. What you have given?

A. They are.

Q. And are you able to state the fair and reasonable value of the improvements on that lot and block as you found them in 1918, for the 1919 assessment?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception. I think he ought
27821 to be allowed at least to answer whether he is able to say.

The Master: No.

Mr. Chambers: That is only a preliminary question.

The Master: No, I won't allow that.

Q. Now, Block 1093, Lot 9, have you that?

A. I have.

Q. Will you give me the dimensions of that block and lot as you assessed it?

Mr. Ransom: Objected to as given before.

The Master: Objection sustained, my recollection being that the witness has already given the
27822 dimensions.

Q. What year did you make the assessment upon that lot and block?

A. For the tax of 1919.

Q. Have you already given the valuation of it unimproved?

A. I have.

Q. Mr. Tracey, did you find some improvements on that lot and block?

A. I did.

Q. What improvements did you find upon it in 1918, when you visited it?

Q. One large tank and an engine room.

The Master: Gas holder?

The Witness: Gas holder.

The Master: And an engine room?

The Witness: Yes, sir.

The Master: Engine house you mean?

The Witness: Engine house.

Q. Did you examine the engine house?

A. I did.

Q. Did you place a value upon this property with the improvements on it?

A. I did. 27824

Q. In the 1919 assessment?

A. I did.

Q. Now, excluding the holder what valuation did you place upon that plot, including the other improvements?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what the full value, or fair and reasonable value of that lot is or was in 1919, with the improvements thereon?

Mr. Ransom: Objected to on the grounds already stated. 27825

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: I understand, Mr. Tracey, that you valued the building, including the engine?

The Witness: I did.

The Master: So that the figure that you put upon the property as improved included your figures for the gas holder, the engine house and the engine in the engine house?

The Witness: A separate value for the gas tank and a separate value for the building.

27826 John F. Tracey, Cross.

The Master: But the separate value you gave for the building includes the machinery in it?

The Witness: It did.

The Master: My ruling will stand.

Q. What was the value you placed upon that building with the machinery in it?

Mr. Ransom: Objected to on the grounds previously stated.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Have you any others there, Mr. Tracey?

27827 A. I think you have covered everything that I have.

Mr. Chambers: I am going to recall Mr. Tracey for one or two matters.

The Witness: What are they?

Mr. Chambers: Block 1642, Lots 32 and 33.

The Witness: I don't know anything about them. What year do you refer to?

Mr. Chambers: 1915, isn't it?

The Master: Any cross-examination, Mr. Ransom?

Mr. Ransom: If Mr. Chambers is going to recall him I would prefer to wait.

27828 The Master: Go ahead with your cross-examination.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Tracey, have you ever bought or sold gas making apparatus or machinery?

A. No.

Q. Have you ever been connected with a gas plant in any capacity?

A. None other than assessing.

Q. Have you followed and do you follow the market quotations of gas machinery?

A. I do not.

The Master: I don't see how you can cross-examine upon matter that I have not permitted in evidence.

Mr. Ransom: As to many of these properties you have permitted him to testify to the value of buildings and machinery.

The Master: I did not so understand it. In every instance where I permitted the answer to stand it had reference to the building. You can bring out from him that as to some plots where he spoke of buildings yesterday he included machinery, and I will strike out his testimony. There 27830 is no use cross-examining on something that is not in the record.

Q. On what basis do you value buildings used in the gas industry?

A. Taking the cost of reproduction furnished to me by the department of the character of buildings that may be at that particular place.

The Master: You take the cost of reproduction that the department gives you?

The Witness: Under consideration, take the cost of the production of the buildings as filed in the Building Department, and what other elements I can get from builders or contractors. 27831

Q. That is, the department furnishes you as a basis for your work on gas buildings statements showing cost of reproduction?

A. Yes, sir.

Q. And you use that as such basis?

A. Take it under consideration.

Q. And that applies both to gas buildings and to other kinds of buildings, that is buildings used in the manufacture of gas, and buildings like stables or garages or residence buildings where they remained on the property?

A. We take residences, garages, or anything of that sort, from our own information that we can receive from builders, from plans filed, from the cost of material, that we can get from builders or any other source, and base our factor in computing the value of the building on that basis.

Q. Are you familiar with the gas structure known as a scrubber?

A. No.

Q. Did you find any scrubbers in any of these plants?

27833 A. No.

Q. There weren't any on any of them?

A. I didn't go into that detail.

Q. If there were any buildings known as scrubbers you didn't value them?

A. I may have valued them on the report furnished to me by the deputy in charge of real estate of corporations; I don't remember.

Q. You didn't form any independent judgment about them?

A. I don't remember any such buildings, called scrubbers.

Q. And you would not have any basis for forming a judgment as to their value?

27834 Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

Mr. Ransom: This is cross-examination.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. Would you?

A. None other than what I can learn from builders and contractors or information furnished to me by the deputy in charge of the real estate of corporations.

Q. Take buildings that are known as generator houses and their contents?

A. Yes.

Q. Did you give a value to them?

A. I have.

Q. How did you value gas generators?

A. By the capacity.

Q. You found generators at 21st Street in the generator house there?

A. That I don't remember now.

Q. Where did you put a value upon any generators that you recall?

A. In the power house, 38th and 39th Streets, 39th and 40th Streets. 27836

Q. Of the Consolidated Gas Company?

A. No, the Edison plant.

Q. Oh, you mean electric generators?

A. Yes.

Q. Do you recognize any difference between gas and electric generators?

A. No.

Q. And a generator house for an electric plant you would value on the same basis as a generator house in a gas plant?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: Objection overruled. 27837

Q. Would you?

A. No, I don't know the conditions of a generator in a gas plant.

Q. But you do know the conditions at the generator houses in electric plants?

A. I do.

Q. Then, if you don't know the conditions as to generator houses in gas plants will you describe how you value the building and the generators which are a part of what is commonly called in the gas industry a generator house?

A. By the information furnished to me by the deputy in charge of the real estate of corporations, who had handed to me reports sworn to by the gas company as filed in the State Tax Department in Albany as to the value of those different appraisals.

Q. You refer to these tax reports which Mr. Chambers had here a few minutes ago?

A. I don't refer to those reports at all.

Q. Had you ever seen any of those reports which he had here this morning?

A. That I don't remember.

27839 Q. Then as to generator houses you say the basis of your value is reproduction new, or reproduction cost?

Mr. O'Brien: Objection to. He didn't say any such thing. I object to it as incompetent, irrelevant and immaterial and improper in form.

The Master: Objection sustained.

Q. Well, on what basis did you value generators in the building which covers them?

Mr. O'Brien: Objected to as having already been answered. Your Honor, I think the examination along that line is a waste of time. The witness has made it clear, the position taken by

27840 the Tax Department as to that part of the improvements of the complainant company, that they take the sworn statement of the complainant company as the basis of their assessment of that part of the improvements. I would like to say to your Honor right here on this question of making an estimate of say a gas tank by so many cents per cubic foot of capacity, and with reference to the generators, that that system of appraisals has been honored and even testified to in rate cases. I mean to say there are certain practices. You can have some expert witness

who frequently will set up appraisals of a whole plant based upon the capacity of the plant, a development that I suppose came out of the experience of many years, that, whatever the differences in detail in given gas plants, you find, as they found, some basis, some form that they feel they can safely follow. Now, how far it varies from a technical appraisal based upon an examination of the parts I am not to say at this time, but I want to call your Honor's attention to it so that you may know. I may point to the testimony of Mr. Miller along that line. It has been fre- 27842
quently indulged in in rate cases, so that the snicker of counsel for the complainant, who is schooled in the rooms of the Public Service Commission, is entirely out of place when he referred to the generators and appraising the cost of generators by the capacity of them.

The Master: Is there an unanswered question?

(Question read by stenographer as follows):

"Q. Well, on what basis did you value generators in the buildings which covers them?"

A. Fixed upon the information given to me by the deputy in charge of the real estate of corporations. 27843

Q. Now, coming back for a moment to generators, you say you valued these generators on the basis of cubic capacity?

A. I didn't value those on those capacities at all; I valued those by the information given to me by the deputy in charge of the real estate of corporations.

Q. You didn't know anything about their capacity?

Mr. O'Brien: Objected to.

A. I did not.

Q. You don't now know what their capacity was?

A. I do not.

Q. With respect to these various buildings as to which you have testified, buildings used in making gas, you stated yesterday that you took into account in determining the value of the building the income which was or might be realized therefrom—is that correct?

A. Not from a gas plant.

Q. That is, so far as any buildings of a gas plant are concerned you did not take into account income in determining value?

A. I did not.

27845 Q. Now, as to Block 978, didn't you testify yesterday that you took into account income in valuing the buildings?

A. That was not a building used for furnishing gas or making gas.

The Master: Did you testify that you took income into consideration?

The Witness: I did.

Q. As to Block 989, Lot 1, did you not testify yesterday that you took into account the income in determining its value?

A. Not that I remember.

Q. I call your attention to your testimony on page
27846 7528 (mimeograph copy) of yesterday's record, where you were interrogated by the Master with respect to the properties which you valued. This was in connection with the valuation of the improvements on Block 989, Lot 1. The Master asked you—

The Master: What page is that?

Mr. Ransom: Page 7528 (mimeograph record).

Q. (Continued.) "Q. Let me ask you, Mr. Tracey, in valuing the buildings which you have valued, did you have a standard furnished by the department?

"A. I took into consideration sales, rental, offering prices and refusals and appraisals.

"Q. I am talking about improvements?

"A. I am talking about improvements, too.

"Q. How about the buildings?

"A. I took into consideration the condition of the building and the neighborhood.

"Q. You didn't have a standard furnished to you by the department as you had in the case of the holders?

"A. Based upon the income, based upon the value of the land, and the income, provided the income re- 27848
mained stable if properly managed.

"Q. Take one of these gas manufacturing plants, how did you figure that?

"A. The retorts?

"Q. Well, there was a two-story building covering the whole block, you said?

"A. I figured that from the income that could be brought from it if properly rented.

"Q. For what?

"A. For any purpose that the neighborhood would be suited for."

Do you wish to change your testimony in any respect as to income? 27849

A. Block 989, Lot No. 1, would be an error, because there was only a tank on that lot and a small building, a two-story building, one and two stories, 35 by 25. As I remember, the Master asked me how would I determine the value of a building or improvement of that sort, and I made that statement as you have said.

Q. Is this true, then, that with respect to any of the property which is a part of a gas plant and comes within the category of a building used in the manu-

facture or distribution of gas, you did not take into account income in determining its value?

A. No.

Q. Is that statement true?

A. That is true The information as to the gas plants, as to the manufacturing plants. I took from what the deputy in charge of the real estate of corporations had furnished.

Q. And that is true as to all the buildings and structures and machinery and apparatus used in connection with the manufacture and distribution of gas?

27851 A. Yes.

Q. Prior to being recalled to the stand as a witness for the defendants, did you have conversations with Mr. O'Brien or Mr. Chambers, or representatives of the defendants, about your testimony?

A. No, sir.

Q. You have testified here not from original books, but from various memoranda, have you not, on which you had prepared material which was asked for?

A. I have.

Q. Who told you what was going to be asked for?

A. Nobody.

Q. How did you know?

27852 A. The block and lot numbers were given to me, as to what I would be questioned in these proceedings, and when I got those block and lot numbers I went to the tax books in order to refresh my memory back fourteen years—

Q. (Interposing.) Who told you that?

The Master: Mr. Ransom wants to know who told you what to prepare?

The Witness: This fellow sitting here (indicating).

Q. Meaning whom—Mr. Hertsoff?

A. Of the Corporation Counsel's office.

By the Master:

Q. He told you what to prepare?

A. He told me what books would be needed and the lot and block numbers of the assessments that would be brought out here at this hearing.

Q. Well, he likewise told you what information they wanted to bring out, did he not?

A. He did not.

Q. How could you prepare this unless you knew what to prepare?

A. Because I had been here before and examined by Mr.— 27854

Q. (Interposing.) How did you know that it was going back to 1906?

A. Because he told me to bring the assessment rolls for 1906 over.

By Mr. Ransom:

Q. How did you come to have all these sheets prepared, which you brought over instead of the rolls?

A. Because they bring the field books here and the field books are not official, and I would not trust to swear from the field books, so I made those memorandums from the annual record, so that if I made a statement here I would be swearing to the truth.

The Master: It is perfectly clear that Mr. Hertsoff told him what books he would need, which gave him the general information as to what he would be asked, so he made up these papers for convenience, which was a very good thing to do. 27855

Mr. Chambers: I suppose that is reprehensible, too.

Q. Have you read any of the testimony given in this case by the various persons with respect to buildings and improvements on the various parcels of land concerning which you have testified?

A. None, only part of my own testimony.

Q. When you made your inspection and valuation of the improvements located on Block 979, Lot 1, did you not find on that land more than one building?

A. That is all I assessed on that plot.

Q. Is that all you found?

A. That is all that I recollect.

Q. What were the dimensions of that building?

A. As I recollect it was covered.

Q. Covered the entire plot?

A. With the exception of the centre.

27857 Q. Did you go into the building?

A. No.

Q. Did not go inside the property?

A. I did not.

Q. Have not been at any time inside the property?

A. Not in that building.

Q. How do you know that it covered the whole plot?

A. By walking around the block to see, and taking the insurance map that showed it, and the methods of the department, where a building would run from one end of the lot to the other we mark it on our records as "covered," and the information I have got

27858 now is taken from the records of fourteen years ago.

Q. And you have not any information that is less than fourteen years old, as to what is on that property?

A. None other than what I have given, followed up on that same building up to 1911.

Q. In valuing this building did you take into account the income which could be derived from it?

A. I did not. I took the information given to me by the deputy in charge of the real estate of corporations.

27859

The Master: One of the Gas Company's buildings?

The Witness: One of the Gas Company's buildings.

Q. Didn't you assign a square foot value to this building, or what you thought was the building?

A. Not that I remember.

Q. Didn't you testify yesterday that you gave $2 a square foot?

A. I did, yes, sir. I see here $2 a square foot for 1906 and 1907.

27860

Q. Did you or did you not take into account income?

A. I did not.

Q. That might be derived?

A. I did not.

Q. And if you so testified yesterday you were in error?

A. I was—from income.

Q. Did you take into account the improvements, the machinery, the apparatus, the generating—

A. (Interposing.) Only what the deputy in charge of the real estate of corporations had given me as to the value of those improvements on that plot.

27861

Q. So this figure which you gave $542,000, from 1906 to 1911 as representing the value of this land with improvements, was a value which included the machinery and the apparatus and all of the various gas devices that were on the property?

A. Any that was in the building.

Q. And you did not go into the building?

A. I did not.

Q. And you do not know what they were?

A. I do not.

Mr. Ransom: I move to strike out his testimony regarding Block 979, Lot 1, insofar as it

relates to the value of the land with improvements.

Mr. Chambers: I object.

The Master: Motion granted.

Mr. Chambers: What is that?

The Master: Motion granted.

Mr. Chambers: Exception.

The Master: Mr. Chambers, as to most of these buildings, or most of these improvements on these lots, they come within the same category as this plot which I have just stricken out, do
27863 they not?

Mr. Chambers: I beg pardon?

The Master: As to most of these parcels, the improvements are in the same category as this particular plot I have just stricken out the testimony of, do they not?

Mr. Chambers: I do not know. I have not had time to go over it since it was produced here last evening. You are striking out here in bulk, and I will not be able to tell hereafter what you have stricken out and I guess nobody else could.

Q. Are the values which you have given here of the value of the land with improvements the assessed
27864 values which were made by you, or are they the final values given after any proceedings for review or any readjustments by the Tax Commission itself?

A. They are tentative values.

Q. You have given only the tentative values?

A. Only the tentative values issued by the Tax Board.

Q. And you have not in any instance given the final figures, or undertaken to?

A. In every instance I have given you the final figures of the assesed value fixed by the Tax Board.

Q. There are three values, one the figures made by you and sworn to?

A. Yes.

Q. Secondly, the figure made by the Board of Taxes and Assessments, which may or may not agree with your figures, and the third the final figures, is that so?

A. No, the Tax Board did not make any figures for me to swear to.

Q. Are these the figures that you swore to?

A. They are.

Q. In all instances?

A. They are. 27866

Q. In using the information conveyed to you, which you say came from the Tax Department in regard to the value of improvements upon land, of the complainant company which you valued, what consideration did you give to the assessment equalization used or fixed by the State Tax Department?

Mr. Chambers: I object to that as being incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. Chambers: All he stated was what in his judgment was the full value of these pieces of property and the full value with improvements.

Q. What consideration did you give to the assessment equalization? 27867

Mr. Chambers: Overruled?

The Master: Yes.

Mr. Chambers: Exception.

A. Compared them with property in other districts of similar character, to see whether they would equalize with the assessments that were placed upon the property in the other districts.

Q. What rates of tax equalization were used by the

State Tax Department from 1906 to 1914; do you know?

A. What?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. What rates?

A. No.

Q. In taking figures which you say were given you by Mr. Cremen, and with respect to improvements
27869 which he said came from the State Tax Board, did you do anything by way of increasing or reducing the values given by you on the basis of the equalization rates of the State Tax Board?

Mr. Chambers: Same objection. I object as incompetent, irrelevant and immaterial, nothing brought out on direct-examination about it.

The Master: I understand now as to this cross-examination I have stricken out his testimony as to the values based upon that.

Mr. Ransom: Not all of it.

The Master: Objection overruled.

Mr. Chambers: Exception.

27870 A. If I thought that the values furnished to me by the deputy in charge of the real estate of corporations was not fair, either above or below, then I would fix it according to my own opinion.

By the Master:

Q. That is as to gas making apparatus?

A. That is these tanks.

Q. As to gas making apparatus?

A. No, I accepted his figures on the gas making apparatus. That I stated.

Q. How could you do anything about the gas holders when you had a standard on which to figure it?

A. Figuring it by the capacity; if he submitted to me a figure that would bring it more than that used in the department in figuring the capacity, I would not take his figure.

Q. So that the only change that you made was that if the figures which came from the State Tax Department were higher or lower than the figures you would reach by the standard furnished you by the local department, you would take your own?

A. That is it.

By Mr. Ransom:

Q. With respect to Block 951, Lot 35, you valued there the improvements including apparatus? A. I did. 27872

Q. And machinery and the like, used in the manufacture and distribution of gas?

A. That I did not value any machinery at all.

Q. What did you value?

A. Only the building.

Q. For what purpose is the building used?

A. As I recollect then it was a loft building—loft and part for a stable, I think, if I recollect.

Q. What kind of a building?

A. Three-story.

Q. That is in connection with what? 27873

The Master: What do you mean, in connection with what?

Mr. Ransom: Well, a stable used for what purposes, by what department of the company?

A. That I do not know.

Q. Block 953, Lot 35.

A. That is a two-story building.

Q. Did you include there any machinery or apparatus?

A. I did not.

Q. What kind of a building do you say that is?

A. A two-story building—it was.

Q. Used for what purpose?

A. They had gas stoves and ranges in that building—sort of a store room.

Q. Lot 7 of Block 952, did you value improvements in connection with that?

A. I did.

Q. Did you include machinery or apparatus for gas making?

A. The improvements applied to that assessment were furnished to me by the deputy in charge of the real estate of corporations. They were large gas

27875 tanks.

Mr. Ransom: I move to strike out the figures given as to the value of the land with improvements with respect to Block 952, Lot 7.

Mr. Chambers: I object.

The Master: Motion granted.

Mr. Chambers: Exception.

Q. Block 953, Lot 1, you valued there certain tanks?

A. Six small tanks.

Q. Certain buildings?

A. And small buildings, yes.

Q. With machinery and apparatus in the buildings?

A. The information for the improvements in that

27876 plot was furnished to me by the deputy in charge of the real estate of corporations, and his figures I accepted.

Mr. Ransom: I move to strike out the figures given by the witness as to all of the years with respect to the value of improvements.

Mr. Chambers: I object.

The Master: Motion granted.

Mr. Chambers: Exception.

Q. Block 978, Lot 6, you valued there structures of a special gas making and gas distributing character, did you not?

A. I did, the information furnished to me by the deputy in charge of the real estate of corporations, which I accepted.

Mr. Ransom: I move to strike out the testimony of the witness with respect to the value of the land with improvements in the different years as to Block 978, Lot 6.

Mr. Chambers: I object.

The Master: Motion granted.

Mr. Chambers: Exception.

Q. On Lot 5 of Block 978, you undertook there to assign a value to half of the meter house? 27878

A. I did and placed a—

Q. (Interposing.) Both the building and the meters in it?

A. No.

The Master: What do you mean, half of the meter house?

Mr. Ransom: Well, it is partly on that lot.

The Master: What lot?

Mr. Ransom: Lot 5, of Block 978.

The Witness: I valued the building on that, a two-story building 46 by 70, and computed that by a factor of myself.

Q. You included the meters and other apparatus? 27879

A. I did not.

Q. You did not?

A. No.

Q. You did not assign any value to them at all?

A. No.

Q. You left them out of consideration, did you?

A. I did.

Q. You did not obtain any data or information about them from the deputy?

A. No, none.

Q. So that the meters and other appliances and machinery in that building were not assessed by you at all?

A. Not at all.

Q. Why did you leave them out?

A. Because I did not consider them. I did not think that they were there. I assessed the building.

Q. Did you go into this meter house?

A. No.

Q. Now, on Block 987, Lot 37, you gave figures there for the improvements, building and contents?

27881 A. Yes.

Q. Did you go into the building?

A. No.

Q. What were the contents, do you know? Did you get that from the deputy?

A. No, that I did not get. I saw that building being erected there. As I remember, it was a frame building, and I placed a nominal value on it.

Q. Well, you placed a value running with improvements to $85,000?

A. That is $10,000. for the improvements.

Q. Are you sure that that is a frame building?

A. That is the best of my recollection at that time.

27882 Q. If you were told that it was a brick building, would that in any way refresh your recollection?

A. Not now.

Q. Your figure of $80,000, to $85,000, the value of this building and contents, was on a basis of a frame building?

A. It was.

Q. And of course, that would not be a good value for a brick building?

A. Well, it all depends upon the construction of the brick building.

Q. But you valued a frame building, and you testified to the value of a frame building?

A. I did.

Q. And you have given the value of the contents, but you do not know what the contents are?

A. Only the improvements on the building.

Q. That is, you don't know what is in the building, but you valued what was in the building?

A. I did not value anything in that building. I valued the building itself, without any other improvements inside.

Q. Let me ask you again with respect to this building. Did you or did you not place any value upon any machinery, apparatus, appliances, or any property used in the gas making industry or gas distributing industry, contained in this building? 27884

A. No.

Q. And such as was there, you placed no value on it?

A. I did not place any value on anything other than the building itself.

Q. Now, Block 989, Lot 1, you valued there—or you gave the value for improvements?

A. I did.

Q. What were they? 27885

A. The gas tank.

Q. Nothing else?

A. Nothing that I remember now.

Q. Any other property there you did not view or value

A. No.

Q. Will you say that the gas tank was all the property that was there when you made your assessment?

A. All I remember, one large gas tank.

Mr. Ransom: I move to strike out any testimony he gave with respect to the value of improvements on Lot 989. Part of it was stricken out.

The Master: Part of it was stricken out, and any part that was not stricken out, I will strike out.

Mr. Chambers: I object on the ground that the motion to strike out is indefinite, and no one will ever know what is stricken out here unless he identifies it.

27887 The Master: I think I have made it perfectly clear. I have stricken out all of the testimony given by this witness as to the value of improvements except his testimony as to the value of certain buildings, which included nothing but the building. Isn't that clear?

Mr. Chambers: No, I except; it is not clear.

Q. Now, with respect to these buildings in Block 870, did you go into them?

A. No. I was familiar with those buildings there. They were all—

The Master: Where is that, Irving Place and 15th Street?

27888 The Witness: Yes. All old private dwellings.

Q. Before making valuations, you did not go into them?

A. They were only nominal values placed on all those buildings from 1907 down to 1914, as the neighborhood was changing from a residential section to a business section, and the buildings that were there at that time did not enhance the value of the land much.

Q. That is true, you say, all the way from 1907 to 1914?

A. Pretty near, unless they made some alterations in some of the buildings that might increase the value

a thousand or two thousand, which would be a nominal value.

Q. That is true even as to the twelve-story office building, put up in 1911?

A. The twelve-story office building, I assessed at its full value, that was 1912. In 1914 they added six stories to that twelve-story building, making it an eighteen-story building, and for which I added $50,000, for progress on Lot No. 56. The other parcel was on Lot No. 53, which there was no value added for the building at all by me in 1914. In 1915 the assessment which carried the new building was made by 27890
another deputy.

Q. Now, on Block 952, Lot 7, you assessed there the value of the land with improvements?

A. I just gave you that.

Q. Oh, yes. Now, Block 1177, Lot 21, will you describe again just what buildings are on that property you assessed in 1919, or for the 1919 assessment?

A. 90 by 70, two stories; 38 by 23, one story stable.

Q. What is the 90 by 70 used for?

A. That was a loft building.

Q. And the stable plot?

A. 38 by 23, one story stable; 50 by 40, one story office, 96 by 16, one story building, I do not remember 27891
what that was used for; 40 by 25, a one story garage and shed. I placed a nominal value on all of these buildings, and made a total value against the five buildings of $25,000.

Q. You said that they were all obsolete, in your opinion?

A. I did, yes.

Q. Do you know when they were built?

A. No, I do not recollect now.

Q. Did you know at any time when they were built?

A. I do not remember when they were built.

27892 John F. Tracey, Cross.

Q. How many of those buildings are of brick?

A. That I do not remember.

Q. How many of them are of modern fireproof construction?

A. That I do not know.

Q. Now, if it appears that these buildings were built as recently as 1912, that some of them were modern fireproof construction, brick, the office building, and so on, would you still say that they were obsolete?

A. I fixed the value—

27893 Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: Exception.

A. I fixed the value as I found the buildings, the the condition of them, for the 1919 assessment.

Q. What do you mean that they were obsolete?

A. My opinion of them.

Q. That they were so old and unsuited?

A. Unsuited improvements.

Q. Unsuited for what?

A. For any purpose. They did not enhance the value of the land at all, only by a nominal value.

27894 Q. Well, take this brick fireproof office building, built in 1912, would you say that that was obsolete and unsuited for any purpose?

A. To the best of my recollection, the buildings only had a nominal value.

Q. Well, that is not an answer to my question.

A. Well, that is my opinion, and that is the opinion I based my assessment on.

Q. But you do not think that a building of that kind built as recently as 1912, has become obsolete?

Mr. Chambers: I object to that. There is no evidence it was built in 1912.

Mr. Ransom: The evidence is here.

Q. What is your answer to that question?

Mr. Chambers: I object as incompetent.

A. I fixed the assessment according to what I valued the buildings at for 1919.

The Master: Don't spend any more time on that.

Mr. Ransom: I do not think I have covered all of the property as to which he has testified to the value of land with improvements in the case of structures containing apparatus, machinery, appliances, and other structures and devices used 27896
in the gas making industry or the gas distributing industry, and I make a blanket motion to strike out any other testimony given by him of the value of land with improvements relating to any building and contents where it appears that the contents included apparatus, machinery and the like used in the gas making industry.

The Master: The motion will be denied.

Mr. Ransom: Well, then, I will have to go over it.

The Master: You don't have to go over it at all. The mere fact I deny your motion to strike out don't say I will give it any weight or 27897
consideration, if I find the record discloses it. That is why I have said so often these motions to strike out are perfectly senseless. In a jury case, of course, the motion to strike out is proper.

Mr. Ransom: As long as the testimony stands, the defendants will use it and I will be under the necessity of dealing with it and rebutting it.

The Master: Go ahead and ask him the questions. Go over the same ground.

Q. Generally it is true, isn't it, that with respect to your testimony as to buildings that you did not go inside the buildings to make your valuations?

A. It is.

Q. And generally it is true, is it not, that you were given schedules of bases by the deputy or by the Tax Department as to cost of reproduction of the buildings?

Mr. Chambers: I object to that as incompetent.

The Master: Yes, I will sustain the objection. Sufficiently covered.

Mr. Ransom: It is covered only as to certain parcels.

The Master: It is sufficiently covered.

27899 Q. Well, does the Tax Department furnish to you for your use schedules or formulae for computing values of buildings?

A. No.

Q. Did you use the report of the State Tax Department, this matter given to you by Mr. Cremens, for all of the years concerning which you were interrogated yesterday by Mr. Chambers?

A. I did.

The Master: For all of the gas making property?

The Witness: For all of the gas making property.

27900 Q. And did you see the reports at that time?

A. The report he handed me.

Q. The original reports?

A. I do not know whether it was original report. The report handed to me by Mr. Cremens. I did not question whether that was the original report or not. I accepted it.

Q. As to these years, 1908, 1909, 1907 and 1906, you found in that tax report the properties broken up into lot and block numbers and the improvements on each lot segregated and separately given?

A. Yes.

Q. On the original reports, or the reports that you had?

A. The reports shown to me by Mr. Cremens.

Q. You are quite sure of that?

A. I am.

The Master: Whatever the paper was that Mr. Cremens showed you, it gave that kind of data.

The Witness: It did, referring to block and lot number on each parcel, showing what the improvements were, and the amount.

Mr. Ransom: Has the Attorney General produced here, as he promised yesterday, the tax reports which he said were those given to the witness? 27902

Mr. Chambers: He has produced the tax reports, but he does not seem to be able to identify them. I will have to try again.

Mr. Ransom: I call upon the Attorney General, if he has in court the tax reports of the company for those years.

Mr. Chambers: I have the tax reports for those years.

Mr. Ransom: Will you let me have them?

Mr. Chambers: The original? 27903

Mr. Ransom: May I take them?

Mr. Chambers: Yes, which ones do you want?

Mr. Ransom: Let me see them.

Mr. Chambers: Well, what years? I am not going to hand you all.

Mr. Ransom: What years have you?

Mr. Chambers: Well, the years in question.

The Master: They are public records.

Mr. Chambers: I am not going to hand him the tax reports. Pinned with them are a lot of private papers.

The Master: Give him the tax reports. There is too much fencing and fussing around here.

Mr. Chambers: I am not fussing. I do not have to hand him these.

The Master: You certainly do, if they are tax reports.

Mr. Chambers: Why, no, I do not. He can subpoena them.

The Master: They are subpoenaed right here in court. They are here. Do not let's have any more of that nonsense.

27905 Mr. Ransom: I call for all of the original reports which the Attorney General as an officer of the State has in court.

Mr. Chambers: And they will be offered in evidence when you look at them, I suppose. What year do you want?

Mr. Ransom: I have asked for all of them.

Mr. Chambers: Well, I will be obliged to go through them and take out the private papers and letters which are fastened in them.

Mr. Chambers: I hand you 1906, with the complaint; I don't want to detach that.

The Master: Do you want anything more with

27906 this witness?

Mr. Ransom: Yes, I have a few questions.

Mr. Chambers: The other side has copies of these.

The Master: That does not interest me.

Mr. Chambers: That does not interest you?

The Master: No. The originals are here and they are entitled to have them.

Mr. Chambers: There are private memoranda attached to them, etc.

The Master: What is it you want to get at here?

Mr. Ransom: I want the reports.

The Master: I am not going to keep this witness here until you get them.

Mr. Ransom: Let the Attorney General turn them over.

Mr. Chambers: Here is 1907.

The Master: What do you want to ask the witness about these reports? He has looked at them and says he does not identify them and does not know anything about them. You can look at them during recess.

Mr. Ransom: If he is coming back on the 27908
stand—

The Master: I don't know whether he is or not; there is some talk about it.

Mr. Ransom: I will ask one or two questions.

Q. Have you your notes there on Block 952, Lot 7?

A. What is the question?

Q. You placed on this property for 1907, 1908 and 1909 exactly the same values of the improvements?

A. I did.

Q. With respect to this and many others of the properties concerning which you testified yesterday, did you give any less value to the property by reason 27909
of its increased age from year to year?

A. The information furnished to me by the deputy in charge of the real estate of the corporations, I fixed on these properties.

The Master: What do you mean by that, Mr. Tracey?

A. The deputy in charge of the real estate of the corporations furnishes us with the values sworn to by the company to the State Tax Department.

The Master: Well, that is one of those values that I have stricken out.

Mr. Ransom: The point that I have in mind that I had to bring out by these reports when I have a chance to go over them is that the company has not sworn to these values. The company hasn't any quarrel with the value it did swear to—

The Master: There isn't any proof here that they did.

Mr. Ransom: But with respect to some of these properties it is still in the record.

The Master: Go on.

27911 Q. Did you in making the valuation to which I directed your attention give any less value to the property by reason of its increased age?

A. I considered the conditions at the time when I fixed the assessment.

Q. But you did not find, for example, on this parcel, that the value of the improvements on it was any less by reason of age?

A. That was allowed for in Mr. Cremen's report as shown to me.

Q. But the value of the improvements was exactly the same from year to year?

A. It was.

27912 Mr. Ransom: May I have the rest of the reports?

Mr. Chambers: Yes. You started to ask questions and I came over here. I am going to take out any private memoranda of the department.

Mr. Ransom: May I ask from what custody these are produced?

Mr. Chambers: I decline to answer and be cross-examined unless you call me. I have a right to have these tax reports.

Mr. Ransom: Let me have 1908, 1909, 1910 and 1916?

Mr. Chambers: You can't cross-examine me unless you call me.

Mr. Ransom: May the witness look at these reports and see if he recalls any of them?

The Witness: I have looked at these reports. I do not recall seeing any of them.

Q. These are the original reports?

A. I don't know.

Q. Mr. Tracey, I show you this document produced by the Attorney General, purporting to be the report of the Consolidated Gas Company of New York to the State Board of Tax Commissioners of the 27914
State of New York for the year ending December 31, 1910, stamped, "Received, State Board of Tax Commissioners, February 11, 1911, Albany," also stamped, "Recorded." I ask you to take this report and indicate to the Master and to me, if you can, where in this report you find set out any information with respect to either the improvements or the value of the improvements on, let us say, Block 952, Lot 7?

A. Do I have to do that, a report I say I never saw before?

The Master: Look at it and see if it is in there. You never saw that report before?

The Witness: I never saw that report before 27915
that I recollect.

The Master: Then it is a waste of time, but you can look at it.

Mr. Ransom: It still stands on the record, your Honor, by the testimony of this witness that the values which he gave to improvements were values which the company had sworn to.

The Master: That is not so at all. His testimony is that Mr. Cremen gave him a statement which he said was a statement from the report, but that does not prove anything.

Mr. Ransom: He has several times stated that that was the value that was taken from the report of the company and which the company had sworn to.

The Master: All right, ask the witness if I am not right in my statement. Mr. Tracey, wherever you said that the figures you gave for improvements of manufacturing plants were the figures given by the company in its report to the State Tax Department, the statement is based upon what Mr. Cremen told you?

27917 The Witness: Furnished to me.

Q. You don't know what the company swore to?

A. I never saw any of the reports.

Q. You don't know what the reports show?

A. I can't tell what the reports show.

Q. And you do not find on this report any segregation of improvements, of values, by lots and blocks?

The Master: I will have him look through this one report and that is all I will take on it. I have stricken it all out.

A. There is nothing on this that I can see that shows any value to any of these that I can determine. All I see is a lot number and a block number in among

27918 this lot here.

Q. There is nothing would show the improvements according to lot or block numbers?

A. Nothing.

Q. Either as to what they are or what their values are?

A. No.

Mr. Ransom: Your Honor, I should be glad to show the witness the reports for other years and put the same questions to him, but I think it is unnecessary. That is all.

Mr. Chambers: You deliver back these reports to me, do you?

Mr. Ransom: Yes.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. Whenever you have placed a valuation upon holders or tanks, as you call them, did you use your independent judgment as to the valuation?

Mr. Ransom: Objected to as incompetent and already covered.

Q. (Continued.) That is to say, did you feel that you were bound entirely by the information that was given you by the department?

Mr. Ransom: Objected to as incompetent and immaterial.

27920

The Master: Objection sustained.

Q. The information that was furnished you by the department, did you use that in aiding you to reach a valuation upon the holders?

Mr. Ransom: Objected to as incompetent and not re-direct examination.

The Master: Objection sustained.

Mr. Chambers: You ask him about it.

The Master: Even if he did not feel bound by the statement made to him by the Tax Department I would not take his testimony as an expert as to the value of gas apparatus and machinery.

Mr. Chambers: I am asking him about tanks.

27921

The Master: Or tanks.

Mr. Chambers: Well, I have to make the record, that is all.

The Master: I am letting you make the record and giving you the benefit of exceptions.

Mr. Chambers: You won't even let him say whether he is able to say a certain thing.

The Master: No, because I won't take his statement; I don't think it is fair to the witness to let him say it.

Mr. Chambers: You even rule out the preliminary question.

The Master: Yes, as fully covered. The witness has very frankly told us what his knowledge is.

Mr. Chambers: No, something came out on cross-examination that had not been said before.

Q. In valuing a tank, if the information furnished you by the department you considered too low, did you exercise your independent judgment and raise it?

Mr. Ransom: Objected to on the grounds already stated, and as not re-direct examination.

27923 The Master: Objection sustained. The witness has stated that if the figures given him by Mr. Cremen as being the figures of the Gas Company were higher or lower than he would calculate on the basis of the Tax Department rule, he would change it, that he took the Tax Department rule of calculation.

Q. Is that correct, that you stuck rigidly to the rule of the Tax Department?

Mr. Ransom: Objected to as incompetent and immaterial.

The Master: I will hear what Mr. Tracey says about that.

27924 A. I did in case there was doubt.

Q. And in case there was no doubt?

A. I accepted the statement given to me by Mr. Cremen.

Q. And in case you thought that the valuation figured that way was too low what then did you do if anything?

Mr. Ransom: Objected to.

The Master: If Cremen's figures were too low, what did you do?

The Witness: If I thought Mr. Cremen's figures were too low in my judgment I would fix the valuation higher.

The Master: On what basis?

The Witness: On the basis of the information that I would receive that Cremen's valuations were low.

The Master: No, you would take the Tax Department basis of calculation then?

The Witness: I would.

Q. Now, on all these buildings that you have testified to you reached your judgment as to the valuation exclusive of engines and gas making machinery, that was your own independent judgment, was it always? 27926

Mr. Ransom: Objected to.

The Master: Objection overruled. It is a little repetition, but that is what the witness has said.

Mr. Ransom: Exception.

A. I did.

Q. Now, as to the engines, you did not follow any rule laid down by the department in valuing those?

Mr. Ransom: Objected to. Here is a man who never saw engines, he doesn't know what kind they were—

The Master: I know that. I am going to let him say now, he didn't use any fixed rule. 27927

Mr. Chambers: He had seen engines for years, he has been valuing engines, along with other things.

The Master: You took no fixed rule as to engines?

The Witness: I did not.

Q. You reached the valuation from your own judgment?

Mr. Ransom: Objected to as incompetent.

The Master: Objection overruled.

Mr. Ransom: Exception.

27928 Joseph Quinn, Direct.

A. By information furnished by the deputy in charge of the real estate of corporations I fixed the value on all the machinery throughout the district on every parcel that I assessed with reference to real estate for corporations.

Q. Was that your own independent judgment?

A. After taking into consideration the amount submitted to me by Mr. Cremen.

Q. You then fixed your own valuation?

A. I did.

Q. In each instance?

27929 A. Each instance.

Mr. Chambers: That is all.

The Master: That is all, next witness.

JOSEPH QUINN, called as a witness on behalf of the defendant Newton, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. You are the same Mr. Quinn who testified for the complainant here in this case?

27930 A. Yes, sir.

Q. Will you take the Block 1070, Lot 5?

A. Of what year?

Q. Beginning 1911 (handing witness book). Have you got it there?

A. Yes, sir.

Q. Did you as Deputy Tax Commissioner assess that lot in the year 1911, unimproved?

A. Yes, sir.

Q. What dimensions did you have on it in 1911, when you assessed it?

A. 200 feet by 98 feet 9 inches.

Q. The 200 feet being on West 41st Street?

A. On 41st Street.

Q. And the 98 feet 9 inches being the depth of the lot?

A. Yes, sir.

Q. What valuation did you place upon that lot in 1911?

The Master: For the 1911 assessment, you mean?

Mr. Chambers: For the 1911 assessment.

A. $88,000.

Q. Was that the value of that as of the second 27933
Monday in January, 1911, or what date?

A. The second Monday in January, of 1911.

Q. Did you value that lot with the improvements thereon?

A. Yes, sir.

Q. What improvements did you find on it, Mr. Quinn, in 1911?

A. In 1911 I found four buildings.

Q. Did you find anything else on it except those four buildings—I mean by way of improvements?

A. That is all, sir.

Q. Did you place a value upon the lot with those improvements upon it? 27933

A. Yes, sir.

Q. What previous experience had you had in valuing improvements such as you found on there—those buildings?

The Master: Have him tell whether that building included any machinery or apparatus.

The Witness: No, sir.

The Master: Just the plain building?

The Witness: Yes, sir.

Q. What experience had you had in valuing buildings such as you found upon this lot?

27934 Joseph Quinn, Direct.

A. I was a deputy in 1909 and 1910, when I appraised buildings in another district.

Q. And before 1909?

A. Before 1909?

Q. Yes.

A. I was a clerk to the deputy in this district.

Q. And how long have you been in the Tax Department?

A. In the Tax Department?

Q. Yes.

A. Since 1899.

27935 The Master: We have covered all that, Mr. Chambers.

Mr. Chambers: We have covered his experience in valuing the land.

The Master: Yes, and the buildings. I think I have got to take the testimony of these witnesses as to what in their judgment these land and buildings were worth, because they are real estate appraisers. When you get beyond that, as to machinery and apparatus, where they took the figures of the Tax Department as a basis, that is another proposition. As I understand it, on this particular plot there were just some buildings and

27936 he did not value any machinery or apparatus involved in them at all.

Q. Give us the value of that lot and block in 1911, with the improvements on it?

A. In 1911?

Q. Yes.

A. $98,000.

The Master: With the improvements?

The Witness: With the improvements.

Q. These two values that you have given, unimproved and improved, as of the second Monday of

January, 1911, are those values in your opinion the full value of that property?

A. Yes, sir.

Q. Improved and unimproved?

A. Yes, sir.

Q. Did you assess the same lot and block in 1912?

A. Yes, sir.

Q. Will you please give the valuation you placed upon it unimproved in 1912?

A. Land $88,000.

Q. And then with the improvements?

A. Total $98,000. 27938

Q. Were the same improvements on it in 1912?

A. The same improvements.

Q. Were those in your opinion and judgment the full value of that land with the improvements thereon?

A. Yes, sir.

Q. For 1913, will you give the valuation you placed upon it unimproved?

A. In 1913, $88,000 for the land; $98,000 total.

Q. And the same improvements were on it in 1913 as in 1912?

A. Yes, sir.

Q. Were those valuations unimproved and improved, which you have given, in your judgment the 27939 full value of that land and the improvements?

A. Yes, sir.

Q. Now for 1913?

A. You just said 1913.

Q. 1914.

A. Yes, sir. Land $88,000.

Q. And the land with the improvements?

A. $98,000.

Q. Were the improvements the same in 1914?

A. Yes, sir.

Q. In your opinion and judgment were those values the full values of the property unimproved and improved?

A. Yes, sir.

Q. Just to go back, when you spoke of the 1911 assessment, the valuation improved and unimproved, was that as of the second Monday of January, 1911?

A. Yes, sir.

Q. In 1912 the value you have given, that was the value of what date?

A. You will have to get me the record book of

27941 1912.

Mr. Ransom: The complainant concedes that that and subsequent valuations were as of October 1st of the year.

The Witness: October 1st.

Q. And from then on, in 1913 and 1914 that you have given, were as of October 1st?

A. As of October 1st.

Q. Did you value that in 1913, that block and lot?

A. Yes, sir, and I will have to get the 1915 field book, please (taking book).

The Master: Have you got it?

The Witness: Yes, sir.

27942 Q. Will you please give me the valuation placed upon that lot in 1915, unimproved?

A. $88,000.

Q. And with the improvements thereon?

A. $98,000.

Q. Were the improvements the same as you have spoken of here before?

A. Yes, sir.

Q. And those values that you have given, were those the full values of the property, unimproved and improved, in your judgment?

A. Yes, sir.

Q. That was as of October 1st, 1917?
A. Yes, sir—1915, you referred to.
Q. 1915, I mean. In 1916, did you value the lot?
A. At $88,000.
Q. Unimproved?
A. Unimproved.
Q. And improved?
A. $98,000.
Q. And were the improvements the same in 1916 as in 1915?
A. Yes, sir.
Q. And in your judgment was the valuation you 27944
have given on this lot and block, unimproved and improved, the full value of the property?
A. Yes, sir.
Q. In 1916, as of October 1st?
A. Yes, sir.
Q. In 1917 what valuation did you place upon it?
A. Land $88,000.
Q. And with the improvements?
A. $98,000.
Q. And were the improvements the same as in the previous year?
A. Yes, sir.
Q. The valuation you placed upon it and have just 27945
given, was that the value of the property unimproved and improved—the full value of the property unimproved and improved, in your judgment?
A. Yes, sir.
Q. As of October 1st, 1917?
A. Yes, sir.
Q. Take Block 870, Lot 60. Have you found it?
A. Yes, sir.
Q. Did you value that lot in 1919 for tax purposes?
A. Yes, sir.

Q. What valuation did you place upon it in 1919?

A. $410,000 for the land.

Q. And did you value it with improvements?

A. Yes.

Q. What was the size of the Lot 60 as you valued it in 1919?

A. 84 feet by 297 feet 6 inches.

Q. I show you a diagram here. It takes in what was formerly Lots 60, 59, 56, 54, 53, 50, 49 and 47, does it not (indicating blueprint)?

A. No, sir.

27947 Q. What does it take in now?

A. What does Lot 60 take in?

Q. Now. It was formerly what?

A. 59, 56, 55, 54, 53, 50, 49 and 48.

Q. And the 84 feet was on Irving Place?

A. The 84 feet was on Irving Place.

Q. And the other dimension, what was that you gave?

A. By 297 feet 6 inches.

Q. On East 15th Street?

A. That is right.

Q. You have given me the value unimproved on that?

27948 A. What?

Q. For 1919, did you give me that?

A. Yes, I gave you that.

Q. With the improvements on it?

A. $2,300,000.

Q. And what was on it?

A. The improvement?

Q. Yes.

A. It was a building—a nineteen-story building.

Q. That is the office building of the Consolidated Gas Company?

A. The office building.

Q. Did you look at that building?

A. I did, sir.

Q. Examine it?

A. I did, sir.

Q. And in your judgment the valuation you placed upon that lot unimproved was the full value of the property, was it?

A. Yes, sir.

Q. And the value you placed upon it improved, with the improvements, was that the full value of the land and improvements, in your judgment?

A. Yes, sir. 27950

Q. That is as of October 1st, 1919, is it?

A. That is as of October 1st, 1918, for the 1919 assessments.

Q. Did you value it for the 1918 assessment?

A. This same parcel? No, sir.

Q. That is, this is the first year you were on it?

A. The year you were referring to?

Q. Yes.

A. Yes, sir.

Q. You valued it, did you, for 1919?

A. That is the appraisement.

Q. That is the 1919?

A. Yes, sir. 27951

The Master: Did you appraise it for 1920? That is what he is trying to get at.

The Witness: Yes, sir.

Q. Did you give the value you placed upon it as of October 1st, 1919, for the 1920 assessment, the land unimproved?

A. $410,000.

Q. And with the improvements thereon?

A. $2,300,000.

Q. Were those valuations in your judgment the full value of that property, improved and unimproved?

A. Yes, sir.

Q. As of October 1st, 1919?

A. Yes, sir.

Q. And you examined the building before you made that appraisal?

A. Yes, sir.

Q. On the assessment of the value before you valued it?

A. Yes, sir.

The Master: Do you figure about $100,000 a story?

27953 The Witness: No, on square foot area.

Q. Now, Block 951, Lot 35.

A. For what year?

Q. That is 1919. Did you assess that for the 1919 taxes?

A. Yes, sir.

Q. The valuation you are about to give is as of October 1st, 1918?

A. Yes, sir.

Q. What dimensions was that lot?

A. 176 feet by 92 feet.

Q. 176 feet being on East 20th Street and the 92 feet being the depth?

27954 A. Yes, sir.

Q. What value did you place upon that lot unimproved as of October 1st, 1918?

A. $53,000.

Q. Did you value it with improvements?

A. Yes, sir.

Q. What improvements were on it?

A. A building 30 feet by 176 feet.

Q. And that is all you found by way of improvements, the building?

A. Yes, sir.

The Master: No machinery or apparatus?

The Witness: No, sir.

Q. What valuation did you place upon that building—upon the improvements on the lot?

A. Do you mean the land and the improvements together?

Q. Yes.

A. $60,000.

The Master: $7,000 for the building.

Q. And that valuation was the full value of that lot and the land and improvements?

27956

A. In my judgment.

Q. As of October 1st, 1918?

A. Yes, in my judgment it was.

Q. Did you assess it for the 1920 taxes, the same lot?

A. Yes, sir.

Q. What valuation did you place upon it as of October 1st, 1919?

A. The land $53,000, total $60,000.

Q. By total you mean with the improvements?

A. With the improvements on it, yes.

Q. Were the improvements the same on October 1st, 1919, as on October 1st, 1918?

27957

A. Yes, sir.

Q. And the last valuation which you have given, is that valuation in your judgment the full value of that property, unimproved and improved, as of that date?

A. Yes, sir.

Q. Block 1092, Lot 7.

A. For what year, Mr. Chambers?

Q. Did you appraise that in 1911?

A. Block 1092, Lot 7?

Q. October 1, 1913, is the year we want.

Mr. Ransom: That would be for the 1914 assessment.

The Witness: You mean for the 1914 tax, or for the 1913 taxes?

Q. 1914 taxes. Block 1092, Lot 7, what were your dimensions of that lot in 1914?

A. In 1914?

Q. Yes, as of October 1, 1913, for the 1914 assessment.

A. For 1914 it was 516 feet 3 7/8 inches on 44th Street.

Q. On Eleventh Avenue?

A. That lot did not go to Eleventh Avenue.

27959 Q. What were the other dimensions?

Mr. Ransom: We went all over this at great length.

A. 430 feet 3/4 inches on 45th Street.

Q. Can you give me the other dimensions, the sides?

Mr. Ransom: Let us have that on the record. The witness says this map which is being shown to him is wrong. I would like that on the record. That was all gone into at great length, many pages of the testimony, about that situation.

Q. Now, the next year the city condemned some of that property, Mr. Quinn. Can you tell what the description of that was after the city condemned the

27960 property?

A. After the city condemned the property?

Q. Yes. It was condemned by the city in 1913.

A. I am just giving you now the dimensions, understand, of Lot 7 as it consisted after the city had taken part.

Mr. Ransom: That is, the tax map boundaries you are giving?

The Witness: I am giving the tax map boundaries as I assessed this property for the 1914 assessment.

Q. All right. Now, go back to the time I asked you about, and give me, if you can—have you given me all the four dimensions, just as you found it on October 1, 1913, for the 1914 assessment? If not, give me the four boundaries, so I will have it.

A. On the north side of 44th Street 515 feet 3 7/8 inches; on the south side of 45th Street 430 feet 0 3/4 inches; on the Twelfth Avenue side, the westerly side, 204 feet 1 inch, and on the easterly side it is irregular, it runs 100 feet 5 inches to the centre line of the block, thence easterly—

Q. (Interrupting.) Is that easterly or westerly? 27962

A. Easterly, according to my map, 50 feet, thence southerly 100 feet, 5 inches.

Q. What value did you place upon that?

The Master: The land?

Q. The land unimproved, as of October 1, 1913.

A. For the 1914 assessment?

Q. Yes.

A. $330,000.

Q. And did you find some improvements on it?

A. Yes, sir.

Q. And you placed the value upon it with improvements?

A. Yes, sir. 27963

Q. What did you find upon it?

A. Some buildings and tanks, as I remember it.

Q. How many tanks, do you remember?

A. Four large tanks and a small tank.

Q. Those are the tanks you found?

A. Yes, sir.

Q. And then you found, you say, some buildings. How many buildings?

A. Well, there were some small buildings there. This parcel was apportioned out of an original plot,

and there was some small buildings on it. Four large tanks and one small tank.

Q. But you haven't told me what the buildings were.

A. The buildings were a meter office, an engine room, and a building, brick, 66x155.

The Master: Used for what?

The Witness: It was used in conjunction with the gas plant. I am not positive, but I think it was a purifier, or something of that kind.

Q. You valued all those improvements, did you?

A. Yes, sir.

27965 Q. Take the tanks. How did you arrive at the valuation for the tanks or holders?

A. Why, from information received from the deputy in charge of the real estate of corporations. He furnished us with a list from the state report that was presented to Albany.

Mr. Ransom: I object to this statement, a list of the State report presented to Albany. He doesn't know anything about that, and I move to strike it out.

The Master: I will strike it out. He gave you a paper that he said was a list.

The Witness: Yes.

27966 The Master: That is all you know about it, that is what he told you, is that right?

The Witness: Yes, sir.

Q. Tell me everything that happened in reaching a valuation on these tanks?

Mr. Ransom: I object as incompetent, irrelevant and immaterial, this witness in the first place as a witness is not qualified by any testimony to put a value upon these tanks, or upon what he describes as part of a gas plant, what he says was a purifier house there in 1914.

The Master: I don't know whether he is or not

yet. I am going to let him state.

Mr. Ransom: If there is any doubt about it, I should like to interrogate him.

The Master: I will let him state, without giving the figures, how he arrived at a figure on a gas tank. He said somebody in the Tax Department. Who was it, Mr. Cremens?

The Witness: I said the deputy in charge of real estate of corporations.

The Master: Who was that, Cremens?

The Witness: Yes.

The Master: He gave you a list of some kind. 27968

Q. Can you state in detail everything you did do in reaching a valuation on those tanks? Give us the entire procedure?

A. Well, that was furnished us—

Mr. Ransom: I object to it on the grounds already stated.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Witness: He furnished us, as I said, with information, and after giving it consideration, I took the gas tanks and inquired into the capacity and then figured them at a unit which I thought was correct in arriving at the value of the tanks. 27969 He also—

Mr. Ransom: I move to strike out the answer of the witness as incompetent, irrelevant and immaterial, on the grounds already stated.

Q. The tanks you could see yourself?

A. Yes.

The Master: Wait a minute, before you go any further. What do you know about tanks, Mr. Quinn, as to what it costs to make them and build them or erect them or replace them or anything of that kind?

The Witness: Reproduction of tanks?

The Master: Yes.

The Witness: I could not say. I don't know anything about the reproduction of tanks.

The Master: What did you mean when you said you took this list that Cremens gave you and gave it consideration. What kind of consideration did you give it? You didn't know anything about tanks, did you?

The Witness: The only thing was that the factors that I have seen them use, that was used on
27971 various tanks, and the unit of value, see, that I considered that and got the capacity of these tanks to the best of my ability, and then figured them at that rate and placed my assessment accordingly.

The Master: As I understood it from another witness, the Tax Department gave you a formula upon which to calculate the value of a tank, didn't it?

The Witness: It submits factors which you consider, don't you understand?

The Master: Well, did you follow those factors?

27972 The Witness: I did to a certain extent.

The Master: You followed them?

The Witness: To a certain extent, yes.

The Master: To what extent?

The Witness: To the extent I used the factor that I thought proper to the best of my ability, on all tanks.

The Master: All you did was to get the capacity of the tank and multiply it by the factor?

The Witness: That is the idea.

The Master: That is all you did?

The Witness: Yes.

The Master: You can't say now whether that tank could be reconstructed or replaced for any such figure more or less could you?

The Witness: No, absolutely nothing.

The Master: You know nothing about it?

The Witness: No.

Q. Now, the buildings, give me all the information you used in regard to the buildings there, on that plot?

A. I put the tanks and the buildings in together in one lump there.

The Master: Don't give us the figure. Did you 27974
make any independent appraisal of the building, using your own judgment and your own experience as to what it cost to replace those buildings, having in mind the price of labor and brick, and the thickness of the wall, and the roof, and foundations and floor beams, and all the elements, did you take this list Mr. Cremens gave you, purporting to be some sort of statement of values made by someone?

The Witness: Presumed to be a sworn statement of the Consolidated Gas Company.

The Master: That is what he told you?

The Witness: Yes. 27975

The Master: And you took that figure?

The Witness: Yes, sir.

The Master: That is what you did, you just adopted that figure?

The Witness: I am not positive whether I adopted the exact figure or not, or whether I rounded it out.

The Master: How did you change it?

The Witness: I might have rounded it out.

The Master: In other words, if this list showed it $78,963.64, you might make it $80,000, or $84,000?

The Witness: Yes.

The Master: That is all you would do, just polish it off?

The Witness: Yes.

The Master: Otherwise you did not use any judgment about it?

The Witness: Not on these plants, no, sir.

Q. On the buildings, didn't you use your independent judgment, on the buildings?

Mr. Ransom: I object to the question. He stated he did not.

27977 The Master: This was a manufacturing plant, wasn't it?

The Witness: A gas plant.

Mr. Chambers: I suggest the Master let him answer my question.

The Master: No, I will let him answer. This was a manufacturing gas plant, wasn't it?

The Witness: Yes, sir.

Mr. Chambers: I object to your Honor's cross-examining my witness.

The Master: That is what I am here for. It had apparatus and machinery in it?

The Witness: Yes, sir.

27978 The Master: As to that kind of property you took this so-called list that Cremens gave you, didn't you?

The Witness: Yes, sir.

The Master: Now, your question is, what value he placed on it?

Mr. Chambers: Your Honor is cross-examining, I think erroneously.

Q. They were manufacturing no gas there at that time, were they?

Mr. Ransom: Objected to, he doesn't know.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Do you know?

Mr. Ransom: Objection.

A. I don't know. I might say—

The Master: Just answer the question.

The Witness: I don't know.

Q. Whether they were manufacturing gas or not?

A. No, sir.

Q. You don't know whether that was in operation or not?

Mr. Ransom: Objected to, fully covered.

The Master: Objection sustained. 27980

Q. Do you?

The Master: It doesn't make any difference.

Mr. Chambers: Well, it was not in operation.

The Master: It doesn't make any difference whether it was operating or not.

Mr. Chambers: A dead plant, a dead horse. I asked him the value of that property with improvements on.

Mr. Ransom: Objected to on the grounds already indicated, wholly incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. In 1914, Mr. Quinn, did you value that lot, unimproved? 27981

A. Yes, sir.

The Master: That was for the 1915 tax?

The Witness: Yes, sir.

Q. Were the dimensions the same as you gave a minute ago when you gave the 1914 tax assessments?

A. Yes, sir.

Q. What was the valuation you placed upon it, unimproved?

A. For 1915?

Q. Yes, for the 1915 tax?

Mr. Ransom: Well, those are two different things. Do you mean in 1915, or for the 1915 tax?

The Master: In 1914, for the 1915 tax.

A. $330,000 for the land.

The Master: The improvements were the same as the year before?

Q. Were the improvements the same?

A. No, sir.

The Master: What improvements were there
27983 on it that year?

The Witness: Four large tanks.

The Master: That is all?

The Witness: For 1915.

The Master: That is all?

The Witness: Yes, sir.

The Master: And the buildings had gone?

The Witness: Yes, sir.

Q. Did you value the tanks?

A. Yes, sir.

The Master: The same way that you did the year before?

The Witness: Yes, sir.

27984 Q. Please state what valuation you placed upon the lot with the improvements thereon?

Mr. Ransom: Objected to on the grounds previously indicated.

The Master: Objection sustained.

Mr. Chambers: Exception. I ask the complainant to give me the original of Exhibit 178.

Q. Mr. Quinn, just to go back for a second to the 1914 assessment on that same block and lot, I show you Complainant's Exhibit 178, which is exactly like the diagram I had here, and counsel's wild statements had no foundation—

Mr. Ransom: I object to Mr. Chambers' statement that some unidentified blueprint, made up by himself or some one connected with his office, is exactly like Exhibit 178.

Mr. Chambers: I do say it.

Q. You see the part in pink on this Exhibit 178, Block 1092, Lot 7?

A. Yes, sir.

Q. Can you now give me the valuation of that lot in pink, which is smaller than the dimensions you gave for the same lot?

A. I cannot. 27986

Q. That is unimproved. Can you apply your unit to that?

Mr. Ransom: I object to that as wholly uncalled for.

Q. So you can say what in your opinion was the value of a lot of that size?

The Master: I will allow that.

Mr. Ransom: Exception. There was no such valuation made by this witness. That was the situation in 1918, not in 1914. This exhibit speaks as of 1918 after the city got in its work.

Q. Give me the valuation as of October 1, 1913?

The Master: I am not going to spend time on 27987
that. You had better take time out of court to make that calculation.

Q. Will you figure that this noon? I would like to have 1913, 1914, 1915, 1916, 1917, 1918, and 1919, if you can. What was the last land value you gave me for the land improved? Was it $330,000, as of October 1, 1914, for the 1915 assessment?

A. $330,000.

Q. What improvements did you find on it then? I think you told me a minute ago?

A. Yes, sir.

Q. Just the tanks?

A. Yes, sir.

Q. Did you assess it for the taxes of 1916, unimproved?

A. Yes, sir.

Q. What value did you place upon it unimproved as of October 1, 1915, for the 1916 assessment?

A. $330,000 for the land.

Q. What improvements were on it then?

A. The four tanks.

Q. And did you value those tanks?

27989 A. Yes, sir.

Q. Are you able to say what was the value of those tanks as of October 1, 1915?

Mr. Ransom: I object to that on the grounds already stated.

The Master: Mr. Quinn, I assume you valued it in the same way as the year before?

The Witness: Yes, sir.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. The valuation you have just given for the land unimproved, was that in your judgment the full value of that property as of October 1, 1915?

27990 A. Yes, sir.

Q. Did you place a valuation upon it in 1916 for the 1917 tax, unimproved?

A. Yes, sir.

Q. What valuation did you place upon it as of that date?

A. $375,000.

Q. Was that in your judgment the full value of that lot as of October 1, 1916?

A. Yes, sir.

Q. Did you value it with the improvements on it as of October 1, 1916?

A. For 1917 taxes?
Q. Yes?
A. Yes, sir.
Q. What improvements were on it then?
A. Four tanks.
Q. The same as 1916?
A. Yes, sir.

The Master: The valuation you placed on it was reached in the same way as in the other years?

The Witness: Yes, sir.

Q. Will you give the value you placed upon it with 27992
the improvements as of October 1, 1916?

Mr. Ransom: I object to that on the same grounds.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you value that lot in 1917, October 1st, for the 1918 tax?
A. Yes, sir.
Q. Unimproved?
A. Yes, sir.
Q. What valuation did you place upon it?
A. $375,000.
Q. That is unimproved? 27993
A. Unimproved.
Q. Was that in your judgment the full value of that lot unimproved as of that date?
A. Yes, sir.
Q. Did you value it with improvements on it?
A. Yes, sir.
Q. The same improvements as in 1916 and 1917?
A. Yes, sir.

The Master: Was the figure arrived at in the same way?

The Witness: Yes, sir.

Q. What was the value of that land with the improvements thereon as of October 1, 1917?

Mr. Ransom: I make the same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you value that lot unimproved for the 1919 taxes?

Mr. Ransom: That has already been testified to by this witness.

A. No, sir.

The Master: He didn't do it.

27995 Mr. Ransom: It has already been testified to, not by this witness.

Mr. Chambers: I suggest that we adjourn now so Mr. Quinn can figure out Block 1092 during recess.

The Master: Why should Mr. Quinn be compelled to spend his lunch hour doing this figuring?

Mr. Ransom: Why don't they do it themselves?

Mr. Chambers: Why should the Court object?

The Master: I think I am here to protect Mr.
27996 Quinn as well as the parties to this litigation. It does not seem fair to ask Mr. Quinn to spend his lunch hour doing this.

Mr. Chambers: I am not asking you to ask him, I am asking him.

The Master: What do you want him to do? You want him to give you a valuation irrespective of the value placed on that land for tax purposes—are you calling him as an expert for that purpose?

Mr. Chambers: I am.

The Master: Mr. Quinn, I will advise you that you are not compelled to act as an expert independent of your duty as a deputy tax commissioner. You can do this figuring if you want to. We will take a recess until 2 o'clock.

Mr. Chambers: I except to the Master's ruling.

Recess until 2 o'clock, P. M.

Afternoon session. 27998

By Mr. Chambers:

Q. Block 1093, Lot 9, Mr. Quinn.

A. Of what year, Mr. Chambers?

Q. Starting with October 1, 1913.

A. That is of the 1914 assessment, I presume?

Q. That is right. You have it?

A. Yes, sir.

Q. Please give me the dimensions of the block and lot as it was in 1913, October 1st, for the 1914 assessment?

A. 369 feet 2 3/4 inches on the north side of 45th Street.

27999

Q. On the north side of West 45th Street?

A. Yes, sir.

Q. And on West 46th Street what?

A. On West 46th Street it was 265 feet 6 1/4 inches.

Q. And the depth?

A. 200 feet 10 inches.

Q. And the line on the—one line there is not a straight line, is it?

A. No.

Q. Which side or direction of the compass is that?

A. Well, that is on the westerly side of this lot.

Q. What is that line; have you the dimension of that line?

A. 136 feet 4 1/8 inches plus 66 feet 9 7/8 inches. On the easterly end of that lot, I said 200 feet; since then there is a lot added to it, I should say 100 feet 5 inches, north from 45th Street; thence westerly 75 feet, thence northerly 100 feet 5 inches.

Q. There is a litle lot down there in the corner; that is a lot that has been added since, that you have just described?

A. No, that was the original value, but I say since
28001 I have had this district there are other lots added to it.

Q. Will you take off that lot there that you just gave—did you assess the value of that Lot 9 with that lot that you just gave added or included?

A. Yes, sir.

Q. For the 1914 taxes?

A. For the 1914 taxes.

Q. Without the improvements, what valuation did you place upon the whole lot as you have given it now?

A. The land?

Q. Yes.

28002 A. $224,000.

Q. Can you deduct that little added plot there that you gave and give me the assessment on the other?

A. No, I cannot, because that is made for 1920 by different appraisers. The Lot No. 9 which I assessed I better repeat the dimensions of so that you will understand it.

Q. That is right.

A. 369 feet 2 3/4 inches on the north side of 45th Street; thence northerly 100 feet 5 inches; thence westerly 75 feet; thence northerly 100 feet 5 inches; thence westerly 265 feet 6 1/4 inches; thence southerly 66 feet 9 7/8 inches plus 136 feet 4 1/8 inches.

Q. To the place of beginning?

A. To the point of beginning.

Q. Can you give me the valuation you placed upon that lot, unimproved?

By the Master:

Q. You had a unit there, Mr. Quinn, for these lots on the north side of 45th Street. What was that unit?

A. On the north side of 45th Street?

Q. Yes.

A. $320.

Q. Per front foot? 28004

A. A front foot.

Q. Making how much a lot?

A. $8,000.

Q. That is $320 times 25, or $8,000?

A. Yes.

Q. This is approximately three lots, this end of it?

A. Absolutely.

Q. So you may say that was $24,000. Then you have to take into consideration the additional plottage value.

By Mr. Chambers:

Q. Can you do that?

Mr. Ransom: Objected to. There never was any such assessment or any such valuation. 28005

The Master: No, that is right, but I will let this witness say. He has testified to his unit and he can say what his plottage was; then Mr. Chambers can figure it out.

Mr. Ransom: But he never assessed any such thing.

The Master: He assessed this entire piece.

Mr. Ransom: In 1914?

The Master: In 1914, on a basis of unit values of that street, plus the plottage value. Mr. Cham-

bers can get the figures and make such argument as he wants about it.

A. Plus ten per cent.

Q. Ten per cent?

A. Yes.

Q. Do you mean ten per cent of that last figure that you gave a moment ago?

A. I beg your pardon?

Q. Ten per cent of that last figure you gave; ten per cent of the $26,400?

Mr. Ransom: That is with the plottage figured.

28007 The Witness: Plottage, yes.

Mr. Ransom: It would be ten per cent of the $224,000, would it not.

Q. Ten per cent of it would be $2,400. It was $24,000?

A. Yes.

Q. Ten per cent on that?

A. These three lots, 75 feet wide.

Q. And that makes the total of that $26,400, for that corner down in there?

A. It is not a corner, it is an interior piece.

Q. The interior piece. If that $26,400 was deducted from the total assessments there of $224,000

28008 it would make $197,600 for the remaining part of that plot, if my figures are correct?

Mr. Ransom: I object to the question. It is not a sound basis of calculation at all.

Mr. Chambers: Mr. Quinn, is that it?

Mr. Ransom: I object to it.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Yes.

Q. Would you say then $197,600 was the full value of that Lot 9, Block 1093, excluding the interior piece

of that lot that you have described, as of October 1, 1913?

A. $197,600?

Q. Yes.

A. Approximately, yes.

Q. That is substantially correct?

A. Yes.

Q. Did you assess that lot and block with the improvements on it?

A. Yes, sir.

Q. For that year?

A. Yes, sir. 28010

Q. What improvements were on it on October 1, 1913?

A. There were two tanks and some small buildings; that is, one of them was a wagon shed.

Q. Would you just as leave suspend a minute, Mr. Quinn, and I can call Mr. Tracey for one thing?

The Master: Let him finish this. Finish this, Mr. Quinn.

A. I just want to get that 1914 figure. Yes, for 1914, two tanks and some small buildings.

Q. Do you know what portion of the lot the buildings were on? Were any of the buildings on that little interior plot which you described? 28011

A. No, sir, not to my knowledge.

Q. They were on the other portion?

A. On the other portion.

Q. You placed a valuation on the tanks?

A. Yes, sir.

Q. And are you able to say what the value of that property was October 1, 1913, excluding the tanks but with the buildings on it?

By the Master:

Q. The value you placed on the tanks you arrived at in the same form as you previously described?

A. Yes.

Q. How about the buildings?

A. The buildings were only nominal, about—

Mr. Ransom: What kind of buildings do you say they were?

Mr. Chambers: You have your chance to cross-examine him. I suggest that counsel sit down and keep still.

Mr. Ransom: I object to the question.

The Master: Objection overruled.

Mr. Ransom: Unless it appears what kind of
28013 buildings they were.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Master: What I want to get from the witness in fixing the value of the buildings did he use his own judgment or take the value from somewhere else.

The Witness: I used my own judgment of the value of the buildings.

By Mr. Chambers:

Q. Can you tell us how much you placed as the value, excluding the tank, and how much you gave for the other improvements?

28014 Mr. Ransom: I object to the question, because I think if it were asked, either by the Master or permitted to be asked by me, it appears that it included buildings that were part of a plant, and machinery and apparatus.

The Master: The witness says no. If it subsequently develops, I will strike it out.

Mr. Ransom: He did not say that.

The Master: He did, when you were talking to Mr. Alrich. He said a stable.

Mr. Ransom: He did not say, as I heard, that that was all there was there.

The Master: He said there were a few buildings on that, and one of them was a stable. Did you not?

The Witness: Yes, and a wagon shed.

Mr. Ransom: The other buildings were buildings containing gas apparatus.

The Master: He says not.

Mr. Ransom: I have not heard him say that, and the record will bear me out, I think.

Q. Mr. Quinn, you are looking for what value you placed on the improvements excluding the holders that you found there? 28016

A. Well, excluding the holders?

Q. Yes.

A. There was about $60,000.

By the Master:

Q. What, for the stable and the little wagon shed?

A. No, the engine house and boiler house.

Q. You are talking now of the stable and the wagon shed.

A. For 1914. For 1914 there was—the buildings were assessed at about $6,000.

Q. How much?

A. About $6,000.

By Mr. Chambers: 28017

Q. Six?

A. Yes.

Mr. Ransom: I move to strike out the answer on the ground that it affirmatively appears now, in accordance with the other testimony, of previous witnesses, that there was an engine, exhauster and boiler house on this property.

Mr. Chambers: That does not make any difference.

The Master: No, I am going to take Mr. Quinn's statement. Mr. Quinn says there was

a little stable and a wagon shed there of the value of $6,000.

Q. You said a minute ago $60,000. Did you mean six?

A. $6,000.

Q. I understood you to say $60,000 the first time you mentioned it. Did you mean that as six? You have said six, and since I was wondering if I misunderstood you?

A. $6,000.

Q. Then the only other improvement you appraised
28019 or fixed a value on was the tanks or holders, in addition to that $6,000 building value, is that right?

A. Yes, sir.

The Master: How about this engine house and other things you told us about?

The Witness: I appraised the tanks and buildings for 1914 at 106—

Mr. Ransom: I object to his stating what he appraised the tanks for.

The Master: Objection sustained.

Mr. Ransom: Strike it out, if the stenographer has noted it, physically.

Q. You appraised the buildings at $6,000, and then
28020 the only other improvements on it that you appraised were the tanks?

A. That is all.

Q. Now, are you able to say what the value of the improvements was including the buildings and the tanks all together?

Mr. Ransom: Objected to on the grounds already stated.

The Master: Objection sustained.

Mr. Chambers: Exception.

Mr. Ransom: I should like an answer to the question which the Master addressed to the wit-

ness, as to what about this engine and boiler house that has been on the property all the way through.

Mr. Chambers: I suggest counsel sit down and keep still unless he has got objections. He is interfering with this examination.

The Master: I sustain Mr. Chambers' motion. Mr. Ransom will sit down.

Mr. Chambers: Now, your Honor ruled that question out.

The Master: Yes.

Mr. Chambers: Exception. 28022

Q. Did you appraise that property in 1914, for the 1915 taxes?

A. Yes, sir.

Q. Unimproved?

A. Yes, sir.

Q. Could you tell me whether the valuation you fixed on the property for that part of it—for all of it unimproved except that interior plot—what would it be, $197,600 for the 1915 taxes, the same as in 1914?

A. $225,000.

Q. That includes the interior plot. Now, was your assessment just the same for 1915 as for 1914, for 28023
the whole lot?

A. It was $224,000 in 1914, and it is $25,000 for 1915.

Q. The assessed value of the interior plot which you assessed at $26,400—

The Master: No, he did not. He did not assess it at all. That was the unit basis.

Q. Applying your unit for 1914, would make $26,400, and would that be the same for this year 1915?

A. It would be the appraisal on the 75 feet, would be the same for 1915.

Q. So that excluding the interior plot, it would be $198,600?

A. Yes, sir.

Q. And that in your opinion and judgment is the full value of that portion of that lot and block as of October 1st, 1914?

A. Yes, sir.

Q. Were the improvements the same in 1915?

A. We had one tank.

28025 Q. And no buildings?

A. All I found on it was a tank.

Q. So the only improvements you fixed a valuation on was the one tank?

A. Yes, sir.

The Master: And that valuation was fixed in the same way you have already described?

The Witness: Yes, sir.

Q. Can you give the valuation of that tank as you fixed it, October 1st, 1914?

Mr. Ransom: Objected to on the grounds already stated.

The Master: Objection sustained.

28026 Mr. Chambers: Exception.

Q. Are you able to state what was the value of that tank as of October 1st, 1914?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you assess that lot and block in 1915, October 1st, 1915, for the 1916 assessment?

A. Yes, sir.

Q. What value did you place upon it unimproved, the whole plot?

A. Block 1093, Lot 9, for 1916?

Q. Yes.

A. Land value $225,000.

The Master: That is the same as the year before?

The Witness: Yes.

Q. And the little plot there, the interior lot which we have described as such, would be just the same, $26,400, the value, if applying your unit?

A. Applying my unit.

Q. And then the rest of the lot and block, excluding that interior plot, would be $198,600, would it? 28028

A. Yes, sir.

Q. That in your judgment and opinion is the full value of that land unimproved?

A. Yes, sir.

Q. As of October 1st, 1915?

A. Yes, sir.

Q. Now, what did you say was on it, what improvements?

A. A tank.

Q. The same tank as in 1915?

A. I presume it was the same tank.

Q. And did you place a valuation upon that?

A. Yes, sir. 28029

The Master: In the same way?

The Witness: In the same way, sir.

Q. Are you able to give the value of that tank?

Mr. Ransom: Same objection as before.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to state the value of that land with the improvements on it, as of October 1, 1915?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, the taxes for 1917, and the valuation as of October 1, 1916, what values did you place upon the whole block and lot?

A. Block 1093, Lot No. 9, $250,000.

Q. That was unimproved?

A. For the land.

Q. Was that the full value of the land unimproved, in your judgment, as of October 1, 1916?

A. Yes, sir.

The Master: He raised it $25,000.

Q. Now, applying your unit to the interior lot there
28031 are you able to say what was the value of that interior lot as of October 1, 1916?

The Master: Did you change this unit?

The Witness: It must have been changed, yes, sir, I will have to figure that out.

Mr. Ransom: I object to taking up the time to do that.

The Master: Objection overruled.

Mr. Ransom: Exception.

Mr. Chambers: I suggest counsel sit down.

The Master: Suggestion adopted again.

Mr. Ransom: I was addressing the Court.

The Witness: Do you want me to—

28032 Q. You have raised, apparently, your unit price there on the full lot?

A. Yes, sir, $9,000—$360 a front foot.

Q. And the plottage, 10 per cent, would that be the same? You did not change that, did you?

A. Yes, I changed that. I made that $28,500.

Q. You make the whole interior lot $28,500?

A. Yes, sir.

Q. And deducting that from $250,000 leaves an amount of $221,500?

A. Yes.

Q. Is that in your judgment and opinion the full value of the remaining part of that lot, excluding the interior plot as of October 1, 1916?

A. $221,500.

Q. That, in your judgment, is the full value of that remaining land, excluding the interior plot, as of October 1, 1916?

A. Yes, sir.

Q. 1917, for the 1918 taxes. Do you need the book?

A. Yes, sir. Land value for Block 1093, Lot No. 9, for 1918? 28034

Q. Yes.

A. $250,000.

The Master: That is the same as the year before?

The Witness: Yes, sir.

Q. And would the interior plot be the same as the year before?

A. Yes, sir.

Q. And would $221,500, in your opinion and judgment, be the full value of the remaining part of that lot as of October 1, 1917, excluding the interior plot?

A. Yes, sir.

Q. Did you assess it for the 1919 taxes? That ends your assessment, doesn't it? 28035

A. Yes, sir.

The Master: You are finished with this parcel now, are you, Mr. Chambers?

Mr. Chambers: No, I did not ask you about the improvements as of October 1, 1916.

Q. Was there a tank on there?

A. As of October 1, 1916, for the 1917 taxes?

Q. Yes.

A. Yes, sir.

Q. And were there any other improvements on it as of that date?

28036 Joseph Quinn, Direct.

A. No, sir.

Q. Did you place a valuation on the property with that improvement on it?

A. Yes, sir.

Mr. Ransom: Objected to.

Q. Are you able to state what was the value of that property with that improvement on it as of October 1, 1916?

Mr. Ransom: Objected to.

The Master: The property was a holder and you figured the value in the same way as already stated?

28037

The Witness: Yes, sir.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Where did you get your figure for that tank in 1916, did you take it from Schedule S of the report of the company, the Consolidated Gas Company, to the State Board of Tax Commissioners?

Mr. Ransom: Objected to, incompetent, it does not appear that he has ever seen Schedule S. It does not appear that anything on that subject is in Schedule S. The previous testimony—

The Master: Suppose it so happens that this witness did see that particular sheet, or says he did?

28038

Mr. Ransom: Well, we will have to take up the time—

The Master: Question allowed.

Mr. Ransom: Exception.

The Master: Did you see the 1916 report of the Consolidated Gas Company?

The Witness: To the best of my knowledge, I did.

The Master: The report.

The Witness: As submitted to me by the department.

The Master: No, you saw this thing that Cremen gave you?

Mr. Chambers: No, he was dead then.

The Master: Well, then, somebody who was alive gave you something, but are you prepared to say that you saw the report of the Consolidated Gas Company to the State Tax Commission, one of these books they are handing around here?

The Witness: I have not seen the book.

The Master: Show the witness a sample of one 28040
of those reports.

Mr. Chambers: Well, you have duplicates of the tax reports, haven't you, filed with your department?

Mr. Ransom: Objected to, incompetent. How does he know they are duplicates unless he has seen the originals.

The Master: Objection sustained.

Q. Look at this report for 1916, Form S, it begins there (indicating).

Mr. Ransom: May the record show what the Attorney General is showing the witness?

The Master: What report is that, Mr. Cham- 28041
bers?

Mr. Chambers: I did say on the record, 1916.

The Master: Consolidated Gas Company's report to the State Tax Commission.

Mr. Chambers: Yes.

The Master: Did you ever see that before, Mr. Quinn?

The Witness: I am not positive, but I saw something similar.

Mr. Ransom: I move to strike out "similar."

Mr. O'Brien: Oh, you want to expedite your trial—we will bring the deputies and the officers, and go literally through this proof and meet your exacting demands. What is the use of talking? I will bring you witnesses here before we get through this case. We will give you the formal proof.

The Master: I don't see the point of all this. Suppose they did. If you have admissions against interest you can put it in evidence, but you can't have this witness testify as to opinion value be-
28043 cause the company reported something. If they have made a statement as to what they claim the value is, put it in evidence as an admission against interest.

Mr. Ransom: The company stands on what it has reported.

The Master: They couldn't help themselves.

Mr. Ransom: The attempt to create the impression that the company has reported something else—

Mr. O'Brien: Create the impression, is good: that is certainly respectful to the Master.

Q. Did you use some reports made by the company,
28044 is that your recollection?

Mr. Ransom: I object to that. He has said no such thing.

The Master: He used something that Mr. Cremen's successor gave him. It doesn't make any difference, in my view. The fact is that he didn't value this property and he didn't have the ability to value it, and he doesn't pretend to be able to value it. The mere fact that he appraised it at the figures stated by the Consolidated Gas Company does not matter. If they gave those figures, and you want to hold them to

28045

those figures, offer their report in evidence. I will rule in this case, even if he had the original report of the Consolidated Gas Company, and took these figures as the basis of his appraisal, in the light of the fact that he doesn't know anything about the cost of building a holder, or anything about it, I won't take his evidence as opinion evidence.

Mr. O'Brien: Of course, as I said to your Honor this morning, there are two phases to the testimony of these deputy tax commissioners. They are produced by the defendants first to testify as to what the Commissioners of the Tax 28046
Department of the city, under the powers given them by the charter, have assessed the lands and [illegible]ments at of the complainant company as specified.

The Master: I would not take his testimony. The best evidence of that is the tax roll.

Mr. O'Brien: We can bring that too, if your Honor wants it, but your Honor did not require it before.

The Master: Because it was not offered.

Mr. O'Brien: That can be done too, but the purpose of producing the witnesses primarily was to testify what assessments have been made 28047
by the tax commissioners.

The Master: No. The complainant offered all that proof as to the value of the property, not what it was assessed at.

Mr. O'Brien: I am talking about the defendants. These men are produced to tell what were the assessments made by the Tax Department of the city.

The Master: I won't take their testimony for that. The official tax roll is the best evidence.

Mr. O'Brien: I will bring the official tax roll and bring the witnesses in, and get it on the record.

The Master: I don't believe I will take it then. I don't see how you can bind these complainants by your assessments.

Mr. O'Brien: We will be entitled to all the presumptions that go with the official acts of the tax commissioners. However, we will argue that later. The point is that they are here in a dual capacity, or for a dual purpose, and
28049 the first one is to testify as to what the assessment was.

The Master: Next question, Mr. Chambers.

Q. What I was trying to ask Mr. Tracey was, whether you didn't use a different procedure in say 1916 in valuing the tank. If you didn't get some different information than you had theretofore?

A. No, sir.

Q. Exactly the same?

A. Practically the same.

Q. And in 1917 did you find improvements on this land, still speaking of Block 1093, Lot 9?

A. A tank.

28050 Q. The same old tank?

A. The same old tank.

Q. Did you place a valuation upon that tank?

A. Yes, sir.

The Master: In the same old way?

The Witness: In the same old way.

Q. Are you able to say what was the value of that land with that improvement on it as of October 1, 1917?

The Master: I won't allow the question.

Mr. Chambers: Exception.

Q. That is the last I asked you about, wasn't it, 1917?

A. You asked me about 1918, and you asked me if I assessed it for 1919 and I told you no.

Q. The assessment for 1918, did you find the same tank on there?

A. Yes, sir.

Q. No other improvement?

A. No other improvement to my knowledge.

Q. Did you place a valuation upon that property with the tank upon it?

A. Yes, sir. 28052

The Master: In the same way?

The Witness: In the same way, yes, sir.

Q. Are you able to say what was the value of that lot as of October 1, 1917, for the 1918 assessment, with that improvement thereon?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception. I suggest that we recall Mr. Tracey for a minute.

The Master: Are you through with this parcel?

Mr. Chambers: Yes.

The Master: All right. 28053

28054 John F. Tracey, Direct.

JOHN F. TRACEY, recalled.

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Tracey, have you now at my request looked at Block 1642, Lots 32 and 33?

A. I have.

Q. As of October 1, 1914, for the 1915 tax?

A. I have.

Q. Can you give me the dimensions of Lot 32 first?

A. 50 feet 5 inches on 114th Street; 100 feet 11
28055 inches to the centre line of the block.

Q. What valuation did you place upon that lot, with those dimensions, as of October 1, 1914, unimproved?

A. Unimproved $22,000.

Q. Was that in your judgment and opinion the full value of that lot unimproved as of that date?

A. It was.

Q. Were there improvements on that lot?

A. There was.

Q. Do you remember what was on it?

A. I do.

Q. What?

28056 A. It was a 3-story building in front, one story in the rear that was as high as two stories, and was treated as a 2-story building in levying the assessment, that is in the rear, and three stories in front.

The Master: Used for what?

The Witness: Offices of the Gas Company.

Q. Did you place a valuation on that building?

A. I did.

Q. What valuation did you place upon it as of October 1, 1914 for the 1915 assessment?

A. The lot with the improvements thereon, $45,000.

Q. Was that in your opinion and judgment the full value of that land with the improvements thereon as of that date?

A. It was.

Q. Now, Lot 32 in Block 1642?

A. Northwest corner of 114th Street and Third Avenue.

Q. What were the dimensions?

A. Fronting 25 feet 2 3/4 inches on Third Avenue, running to a depth of 100 feet along 114th Street.

Q. Did you assess that lot as of October 1, 1914?

A. I did. 28058

Q. Unimproved?

A. I did.

Q. What valuation did you place upon it as of that date, unimproved?

A. Unimproved, $35,000.

Q. Were there some improvements on it?

A. There was.

Q. What improvements as of that date?

A. There was a 3-story front building. The rear portion was a 1-story building covering the lot, as high as a two-story building. That one story was treated as a two-story building in levying the assessment. 28059

Q. Did you examine the building?

A. I did.

Q. Did you place a valuation upon it?

A. I did.

Q. What value did you place upon that lot as of October 1, 1914, with that building thereon?

Mr. Ransom: Of course this is subject to my general objection which I have indicated from time to time as to the competency and binding

28060 Joseph Quinn, Direct.

effect of this testimony offered by the defendants as against the complainant.

The Master: Yes.

Mr. Ransom: That applies to all of the testimony of these witnesses, I take it, without my renewing the objection from time to time?

The Master: Yes.

A. $50,000 with the improvements thereon.

Q. Was that in your opinion and judgment the full value of that lot as of October 1, 1914?

A. It was.

28061 Mr. Chambers: That is all.

By Mr. Ransom:

Q. Was that the final assessment, Mr. Tracey?

A. That was the final assessment.

JOSEPH QUINN, resumed.

DIRECT-EXAMINATION (CONTINUED) BY MR. CHAMBERS:

Q. Block 1157, Lot 1, for 1917. Did you assess that for 1917?

28062 A. Yes, sir.

Q. That was for the 1918 taxes?

A. 1917 taxes.

Q. You assessed it for that?

A. Yes.

Q. What were the dimensions of the lot?

A. 200 feet 10 inches by 800 feet.

Q. 200 feet 10 inches on West End Avenue, and 200 feet 10 inches on Amsterdam Avenue?

A. Yes, sir.

Q. What valuation did you place upon that lot for the 1917 taxes?

A. Land $730,000.

Q. Did you find some improvements on it?

A. Yes, sir.

Q. Can you give me the value now of that lot, cutting off from the Amsterdam Avenue end of the lot 300 feet?

Mr. Ransom: I object to that as wholly uncalled for, speculative and hypothetical, nothing within the province of what this witness has ever done in a public capacity or any other capacity.

The Master: If the witness wants to give expert opinions he can do so.

Mr. Chambers: Not expert, the unit of values as he applied them. 28064

The Master: Ask him what his units were then.

Q. What were your units as of October 1, 1916?

A. On Amsterdam Avenue?

Q. Yes.

A. $16,000.

Q. $16,000 a front foot.

A. $16,000 a foot.

Q. What was your total there on the avenue, how many lots.

A. Eight lots on Amsterdam Avenue.

Q. How deep did you make those? 28065

A. I made them full lots.

Q. And then on West 65th Street how many lots?

A. Twenty-four lots.

Q. How much a lot?

A. $8,000.

Q. And on West 66th Street how many lots?

A. Twelve lots at $8,000 and twelve lots at $9,000.

Q. Which end of the street were the $9,000 and which were the $8,000?

A. Down towards West End Avenue were the $9,000 lots.

Q. How many of them at $9,000 on the West End Avenue end?

A. Twelve.

Q. Now, you can give me, can't you, the valuation?

A. No, you can figure it out, Mr. Chambers, if you want to. Those are the factors.

Q. How about plottage?

A. Yes, sir. I will give you the plottage. I put ten per cent on.

Q. How about the corners on Amsterdam Avenue?

28067 A. I put $16,000 on corners.

Q. For those two corners?

A. Yes.

Q. Applying those units that you gave to that part of the lot which begins on West End Avenue and runs along the northerly side of West 65th Street 500 feet, and then northerly to West 66th Street, 200 feet 10 inches, and then along West 66th Street to West End Avenue, if our figures are correct, it makes $458,000. If the computation was correct would that be, in your opinion, the full value of that part of that lot as of October 1, 1916?

28068 Mr. Ransom: I object to the question as incompetent, hypothetical, dilatory, not within the nature of any testimony of this witness, but merely a calculation made by some one for Mr. Chambers.

The Master: Overruled.

Mr. Ransom: Exception.

The Master: Do you remember the question?

The Witness: Kindly repeat it?

(The question was read.)

A. Yes.

Q. Were there some improvements on that property that lot, on October 1, 1916?

A. Yes.

Q. What improvements?

A. In 1916?

Q. Yes.

A. Gas holder, engine house and office.

Q. Do you know what part of the lot those pieces of property were on?

A. I cannot recall.

Q. I mean which end.

A. No, I cannot recall. I have not my field map or anything.

Q. Have you your field may showing the locations?

28070

A. No. I have none. There is no field map here at all.

Q. Did you place a valuation on all those improvements?

A. Yes, sir.

Q. Did you value the holder—was it one holder? Those improvements, did you value them separately or did you lump them?

A. I valued the buildings and I valued the gas holders and machinery and equipment.

Mr. Ransom: Did you say holder or holders?

The Witness: Holders.

Mr. Ransom: Plural?

The Witness: Plural. 28071

Q. You divided it up into three parts, then, did you?

A. Yes, sir.

Q. Holders, machinery and buildings?

A. Land and buildings and the holders and machinery equipment.

Q. Can you give me the value of that whole lot with the improvements on it, consisting of the buildings and excluding the holder and the machinery?

Mr. Ransom: I object. This is a part of one of the distributing plants of this company. These

buildings and structures come within the special category of gas buildings and structures, concerning which this witness has shown no competency or qualification.

By the Master:

Q. Did you appraise these buildings as separate articles?

A. Yes, sir.

Q. What?

A. Yes.

Q. Without regard to the machinery or plant, or
28073 anything else?

A. No, I saw the—

Q. Was this based upon the list that Mr. Cremen or his successor gave you?

A. I saw the list of that; yes, sir.

Q. And the figures that you appraised them at are the figures in that list?

A. For the equipment and machinery, yes, sir.

Q. But not for the buildings?

A. No, sir.

Q. The buildings are upon your independent judgment?

A. Yes, sir.

28074 The Master: I will let you tell what you appraised the buildings at.

Mr. Ransom: I object to that. The testimony in this case indicates that the buildings on this property are of a specialized kind, on which the general qualifications of this witness with respect to land, or even with respect to general business or manufacturing structures, would not apply.

Mr. Chambers: Anybody can appraise a building who is qualified.

By Mr. Chambers:

Q. State it, will you?

A. For the buildings?

Q. Yes.

A. $35,000.

Q. Then in addition to that—was that the full value of the buildings, in your opinion, as of that date?

A. Yes, sir.

Q. In addition to that you placed a value on the machinery?

A. Yes, sir.

Q. And on the holder?

A. Yes, sir.

Q. Are you able to give the value of the machinery as of that date that you found upon that property? 28076

Mr. Ransom: Objected to as incompetent and no qualifications shown.

By the Master:

Q. Are you able to give a factor for machinery? Can you give him the factor on which you based the assessment for the machinery, or valuation? As I understand you, you said the machinery and the holder or equipment, as you put it, you took from the list or the statement that Mr. Cremen or his successor gave you?

A. Yes.

Q. You took those figures? 28077

A. Yes.

Q. Which you understood come from some report?

A. Yes, sir.

By Mr. Chambers:

Q. Did you use your independent judgment about them?

A. I considered them—figured them up.

By the Master:

Q. Did you have any independent judgment about those values?

A. I looked them over.

Q. Would you want to set your judgment up against the judgment of anyone else about the value of that equipment?

A. No, I would not.

The Master: What is the use of asking these men that? They did not do it.

By Mr. Chambers:

Q. Will you please state what value you placed upon the improvements in the nature of machinery, as of October 1, 1916?

28079 The Master: Objection sustained.

Q. The holders, will you please state what value you placed upon the holders as of October 1, 1916?

The Master: Same ruling.

Mr. Chambers: Exception to both rulings.

Q. 1918, same Lot 1, Block 1157, for the 1918 tax?

A. The land $730,000.

Q. Unimproved?

A. Yes.

Q. That is the same as in 1916, October 1st?

A. Yes.

By the Master:

28080 Q. The units were the same?

A. Yes.

Mr. Chambers: I did not hear that.

The Master: He said the units were the same.

Q. So that if the calculation is correct you would make the same proportion for the 500 feet; is that correct?

A. Yes, sir.

By Mr. Chambers:

Q. The West End Avenue 500 feet would be just the same?

A. Yes, sir.

By the Master:

Q. Were the improvements the same for the following year?

A. Yes, sir.

Q. And you arrived at the value of them in the same way?

A. Yes, sir.

By Mr. Chambers:

Q. What value did you place upon the buildings?

A. $35,000.

Q. As of October 1st, 1917?

A. Yes, sir, for the 1918 assessment. 28082

Q. And was that, in your opinion and judgment, the full value of the buildings as of that date?

A. Yes, sir.

Mr. Ransom: Objected to on the grounds previously stated.

Q. How about the figure, if the computation is correct, of $458,000, for the 500 feet of the westerly end of the lot?

The Master: He has already answered that.

Q. Was that the full value in your opinion and judgment for that part of it—of that block and lot, as of October 1st, 1917?

The Master: For the 1918 assessment. 28083

A. If the computation is correct, yes, sir.

The Master: Did you arrive at the value of the equipment in the same way as you did before?

The Witness: Yes, sir.

Q. Did you appraise that lot and block for the 1919 taxes?

A. No, sir.

Q. Block 1177, Lot 21. Have you found it?

A. Yes.

Q. Did you assess that as of October 1st, 1916, speaking of Lot 21, Block 1177?

A. For the 1917 assessment.

Q. Yes. What dimensions did you use as of that date?

A. Beginning on the northerly side of 65th Street, at the junction of West End Avenue, running northerly 200 feet 10 inches.

Q. That is, running northerly on West End Avenue, yes, 200 feet 10 inches.

A. Thence westerly 343 feet 9 inches.

Q. On West 66th Street?

A. Yes.

28085 Q. To the river?

The Master: No, to a point.

Q. The North River Railroad?

The Master: To a point.

Q. Then south?

A. 205 feet 7 1/8 inches.

The Master: Southeast, that is.

Q. Then along West 65th Street, how many feet?

A. 299 feet 9 inches.

Q To the place of beginning?

A. To the place of beginning.

Q. What value did you place upon that lot and block as of October 1st, 1916, for the 1917 assess-

28086 ment, unimproved?

A. $265,000 for the land.

Q Was that in your opinion and judgment the full value of that land as of that date, as of October 1st, 1916?

A. Yes, sir.

Q. Did you value that land with the improvements thereon?

A. Yes, sir.

Q. What improvements did you find on it as of that date?

A. Why, some buildings.

Q. How many?

A. About five.

Q. And do you know the nature of the buildings?

A. I cannot just recall that, Mr. Chambers.

Q. Did you examine them at the time?

A. Yes, sir, I went into the plant.

Q. Did you place a valuation upon them from your own independent judgment?

A. Yes, sir.

Q. What value did you place upon those buildings or the land with the improvements thereon?

Mr. Ransom: Objected to. It appears from 28088
previous testimony in this case that these buildings and this property contained improvements, apparatus, machinery, appliances and equipment of a nature which this witness is in no way qualified to appraise.

By the Master:

Q. Is that the fact, Mr. Quinn? These buildings contain a lot of apparatus and machinery which you did not value yourself personally?

A. No, sir.

Q. You figured the buildings alone?

A. Yes, sir.

Q. Without any apparatus or machinery? 28089

A Yes, sir.

Q. That total does not include any machinery item?

A. Absolutely no.

Mr. Ransom: That includes nothing but the five buildings?

The Witness: Yes, sir. $290,000, the total.

By Mr. Chambers:

Q. Was that the full value of the land with the improvements as of that date?

A. Yes, sir.

Q. The next year, what value did you place upon that lot and block as of October 1st, 1917?

A. The land $265,000.

Q. Was that the full value of the land as of that date, in your opinion and judgment?

A. Yes, sir.

Q. And now the land with the improvements thereon?

A $290,000.

Q. The same improvements as the year previous?

A. Yes, sir.

28091 Q. And was that the full value of that land with the improvements thereon as of October 1st, 1917, in your judgment?

A. Yes, sir.

Q. Did you assess that in 1918 for the 1919 assessment?

A. No, sir.

Q. Take Block 952, Lot 7.

A. For what year, Mr. Chambers?

Q. October 1st, 1918; for the 1919 assessment?

A. Yes, sir.

Q. What dimensions did you use?

A. 446 feet 6 inches on the north side of 20th

28092 Street between First Avenue and Avenue A and 423 feet on the south side of 21st Street between First Avenue and Avenue A.

Q. Now, the westerly end, the First Avenue end?

A. The First Avenue end?

Q. It is not on First Avenue, but that end of the lot. That would be the west end. What dimensions?

A. The west end would be 184 feet.

Q. Now, on the easterly end, how does it run?

A. Beginning at a point 70 feet westerly from the northwest corner of Avenue A and 20th Street, it runs 92 feet.

Q. Then westerly?

A. 24 feet.

Q. 24 feet; then northerly again.

A. 92 feet.

Q. To the south side of East 21st Street?

A. Yes, sir.

Q. Now, then, did you value that unimproved as of October 1, 1918?

A. Yes, sir.

Q. What value did you place upon it as of that date, unimproved?

Mr. Ransom: That has already been gone into. 28094

A. $292,000.

Q. That you have already testified to, I take it, for the complainant?

A. Yes.

Q. Now, did you find some improvements on that?

A. Yes, sir.

Q. What improvements did you find?

A. Some gas holders.

Q. Anything else?

A. And some buildings.

Q. Some buildings?

A. Yes, sir.

Q. Did you value the gas holders separately from the buildings? 28095

A. No, sir.

Q. You lumped them together?

A. Yes, sir.

Q. How did you value those improvements there?

Mr. Ransom: Objected to.

Q. What method did you use?

Mr. Ransom: He said he lumped them with holders.

The Master: Oh, how did he arrive at the figure, what basis, did you have this list?

The Witness: Yes, I had this list submitted by the deputy in charge.

Q. You had a list?

A. Submitted by the deputy in charge of the real estate of corporations.

Q. And who was in charge this year?

A. I think Mr. Cremens was.

Q. What?

A. Mr. Cremens.

Q. Well, he is dead now?

A. Yes, he is dead now.

28097 Q. Was he alive then?

A. In 1917, yes, sir; or 1918.

Q. No, this is 1918.

A. Yes, sir.

Q. And do you know where he got the list from?

A. No, sir. I don't know where he got the list from.

Q. Did you examine the list?

A. Yes, sir, I saw the list.

Q. As to the buildings, did you form an independent judgment?

A. No, sir, I took them and lumped them together.

Q. And you can't segregate them now?

28098 A. No, sir, not on that map.

Q. What was the assessed valuation you placed upon that lot as of October 1, 1918, for the 1919 assessment with improvements?

Mr. Ransom: Objected to, incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of that lot, with the improvements thereon, as you found them, on October 1, 1918?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you assess it for the 1920 taxes?

A. Yes, sir.

Q. What value did you place upon the land unimproved as of October 1, 1919?

A. $292,000.

Q. And then did you assess it with improvements on for 1920 taxes?

A. Yes, sir.

Q. Are you able to state what was the valuation of that land, with improvements thereon, as of October 1, 1919?

Mr. Ransom: Objected to on the ground already mentioned. 28100

The Master: Was that the same method as last year?

The Witness: Yes, sir.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, Lot 35, same Block 952.

A. Yes, sir.

Q. Did you assess that for the 1919 taxes as of October 1, 1918?

A. Yes, sir.

Q. What were the dimensions you used then as to that lot?

Mr. Ransom: Objected to, that has already been gone into. 28101

The Master: I will have it again.

A. 65 feet on Avenue A by 94 feet.

Q. On East 21st Street?

A. On East 21st Street.

Q. You have already valued that unimproved, haven't you? You testified to that in this same assessment?

A. Yes, last summer.

28102 Joseph Quinn, Direct.

Q. Did you value that with the improvements on it?

A. Yes, sir.

Q. As of that date?

A. Yes, sir.

Q. What did you find on that lot by way of improvements?

A. A 2-story building, 65 x 49.

Q. And did you place a valuation upon that building?

A. Yes, sir.

28103 Q. As of October 1, 1918?

A. Yes, sir.

Q. What valuation did you place upon that building?

The Master: That is the building without any machinery or equipment.

Mr. Ransom: Does the witness state he took into account any apparatus, machinery or equipment?

Mr. Chambers: I suggest counsel sit down and not interfere with this examination.

Mr. Ransom: I am addressing the Court. I suggest that counsel stand up and conduct the

28104 case on the part of the Attorney General.

Mr. Chambers: That is for the Court to say.

Mr. Ransom: I have asked the Court whether the witness stated to your Honor whether he did include or did give a value to apparatus, machinery, equipment and property other than the mere building on this lot.

The Master: The witness hasn't answered it. He was doing some calculation.

Mr. Chambers: Counsel will not interfere until I am through with my examination.

The Master: What is the fact? Did you independently appraise the building?

The Witness: Yes.

The Master: Using your own judgment?

The Witness: Yes, sir.

The Master: It was not taken from this list referred to?

The Witness: No, sir. I might also add that there was an extension on the building in that year.

Q. I could not hear whether you placed an independent valuation? 28106

A. Yes, sir; I did.

Q. Will you please give the valuation of that land, with the improvement thereon, as of October 1, 1918.

The Master: Not with all the improvements. I understand there was machinery and equipment in addition to the building.

Mr. Ransom: This was a governor and engine house, with this exhauster and complex system of valves, all of those things are on this property.

Mr. Chambers: I suggest counsel desist. If he wants to make objections, all right. I am asking the witness, and he is interfering. 28107

The Master: I will let you say what in your judgment the buildings were worth, without any machinery or equipment.

The Witness: $11,500.

Q. As of October 1, 1918?

A. Yes, sir.

Q. Did you value anything else on there except the building you have just given, any other improvements?

A. Yes.

The Master: Did you value something else?

The Witness: Yes.

The Master: What else did you value, the equipment?

The Witness. Machinery and equipment.

Q. In the building?

A. In the building.

The Master: And that you got from this list, I suppose?

The Witness: And verified it inside the building.

28109 The Master: Verified the fact that the stuff was there?

The Witness: Yes.

The Master: But the figures you took from the list?

The Witness: Yes.

Q. Are you able to give the value of that lot, with all the improvements on it, as of October 1, 1918?

Mr. Ransom: Objected to, it appears affirmatively that he could not.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you value that for the 1920 taxes?

28110 A. Yes, sir.

Q. What value did you place upon the buildings for the 1920 taxes?

A. The same.

Q. Same value?

A. Yes, sir.

Q. And what value upon the land unimproved, the same as you testified for complainant?

A. Yes, sir.

Q. Take Block 953, Lot 1, for the taxes of 1919?

A. Yes, sir.

Q. Do you recall whether you testified as to the value of that last summer?

A. I testified as to the value of that land, yes.

Q. Unimproved?

A. Unimproved, yes.

Q. Were there some improvements on it?

A. Yes, sir.

Q. What improvements did you find on it?

A. There were six tanks and some small buildings.

Q. Did you value the buildings separately from the tanks? 28112

A. Yes, sir.

Q. Did you reach an independent judgment as to the value of those buildings?

A. Yes, sir.

Q. What value did you place upon the buildings as of October 1, 1918, of that block?

Mr. Ransom: I object unless it appears that he gave a value to the buildings independently of the apparatus, machinery, equipment valves, piping, and so on which are therein contained.

The Master: He has so said. That is the fact, isn't it, Mr. Quinn, you put a value on the buildings irrespective of and as distinguished from 28113 the equipment?

The Witness: Yes, sir.

Mr. Ransom: Exception.

Q. Now, give the value of the buildings themselves, the improvements that consisted of the buildings?

A. $29,000.

Q. And then in addition to that you valued the tanks?

A. Yes, sir.

The Master: In the same manner you have already testified?

The Witness: Yes, sir.

Q. And some machinery in the building?

The Master: And the equipment in the same way you have testified to?

The Witness: Yes.

Q. Can you give the total value of all the improvements that you found on that lot as of October 1, 1918?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. In the 1920 taxes, did you assess that, did you
28115 fix the value for the 1920 taxes?

A. Yes, sir.

Q. On that same lot and block?

A. Yes, sir.

Q. What value did you place upon the land unimproved as of October 1, 1919?

A. $526,000.

Q. That is, you placed the same amount on it, did you, as the previous years?

A. Yes, sir.

Q. Did you place a valuation upon the buildings?

A. Yes, sir.

Q. What value did you place upon the buildings?

28116 Mr. Ransom: Objected to on the grounds previously indicated.

The Master: Overruled.

Mr. Ransom: Exception.

A. $39,000.

Q. And in your opinion are these values you have given for that lot as of October 1, 1918, and as of October 1, 1919, with the improvement thereon and as of October 1, 1919, unimproved the full value of that property?

A. Yes, sir.

Q. Are you able to give the value of that lot and block as of October 1, 1919, with all of the improvements on it?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Recess.

After recess

Mr. Chambers: I would like to state right on the record so that Mr. Levy and all the other Deputy Tax Commissioners may understand it, that I do not care to have them sit around here in court, and I do not feel responsible for them sitting here in court. I dislike very much having complainant's counsel getting them stirred up, and making them believe we are keeping them here while we delay the case. I don't think it is right and proper. I am perfectly willing that every one of them should stay in their offices until we get word to them that they are needed. 28118

The Master: Proceed.

Mr. O'Brien: I would like to ask Judge Ransom, I think it is only fair to him, before I make any comment, if he has had anything to say to the Deputy Tax Commissioners in and around this court room with respect to the conduct of this case. 28119

The Master: I am not going to permit this discussion. Go ahead, Mr. Chambers.

Mr. O'Brien: I am giving him a chance to say something for himself in open court before I make comments myself.

The Master: I won't have such discussion in or out of the court if I can prevent it. It surely

won't occur in court. Mr. Chambers will proceed.

How many more parcels have you got Mr. Quinn here for Mr. Chambers, and how many years?

Mr. Chambers: Six more parcels and two years.

The Master: How many deputies are there here together?

Mr. O'Brien: Will the deputies please stand up?

28121 The Master: There are six deputies here. I want one deputy who has a considerable number of parcels and a considerable number of years, and another deputy who won't have so much, to stay here, to be sure that I have an afternoon. You can arrange among yourselves which ones shall go to the office.

Q. Mr. Quinn, Block 978, Lot 5, what are the dimensions? This is for October 1, 1918?

Mr. Ransom: That has already been given.

The Master: We have those dimensions, and the valuations.

Q. Were there some improvements on that Lot 5

28122 as of October 1, 1918?

A. Yes, sir, a building 46 by 70.

The Master: What kind of a building?

The Witness: Brick building.

The Master: What was it used for?

Q. What valuation did you place upon that building?

Mr. Ransom: I object to that on the ground that it affirmatively appears by the previous testimony in this case that this building was of a specialized kind known as a meter house containing a large number of various types of meters which are a part of the real estate there.

By the Master:

Q. Did you value the building?

A. Yes, sir.

Q. By itself?

A. Yes, sir.

Q. Without regard to machinery and equipment?

A. Yes, sir.

Q. You used your own judgment?

A. Yes, sir.

Q. Not the result of some list handed to you?

A. No, sir.

Q. Give us the value. 28124

Mr. Ransom: Exception.

A. $6,500.

By Mr. Chambers:

Q. Was that in your opinion and judgment the full value of that building as of October 1, 1918?

A. Yes, sir.

Q. Were there any other improvements on that?

A. No, sir.

Q. That is the only improvement that you fix the valuation on?

A. Yes, sir.

Q. And the only improvement you know of on that lot as of that date? 28125

A. Yes, sir.

Q. Did you assess that lot for 1919, for the 1920 taxes?

A. Yes, sir.

Q. What valuation did you place upon it unimproved for 1919?

A. The same.

Q. And the building?

A. The same.

Q. There has been no change in the improvements over the previous year?

A. Not to my knowledge.

Q. Was the valuation you placed upon the lot unimproved the full value of the property as of October 1, 1919?

A. Yes, sir.

Q. And was the valuation you placed upon the land with the improvements the full value of the land and improvements as of October 1, 1919?

A. Yes, sir.

Q. Block 978, Lot 6—is that 666 feet on 21st Street—as of October 1, 1918?

A. Yes, sir.

28127 Q. What improvements did you find on that lot and block as of October 1, 1918?

A. Buildings and machinery.

Q. How many buildings, do you remember?

A. About four. I might say in connection with that that they work in together.

Q. The buildings?

A. Yes.

Q. Did you value the buildings?

A. Yes, sir.

The Master: Did you value the buildings separately?

The Witness: Yes, sir.

28128 The Master: You used your own judgment as to the buildings?

The Witness: Yes, sir.

Q. What valuation did you place upon all of the buildings on that land as of October 1, 1918?

Mr. Ransom: I object to the question unless he testifies what buildings. The testimony in this case already is that there are nine buildings on that property. Many of them, most of them, are of a type specialized in the gas industry, such as the eighth building, for example, an unroofed building containing eight shaving scrubbers—

The Master: Don't read all that.

Mr. Ransom: And the purifying house, purifying boxes, valve house, and the like, which are of a sort that this witness could not possibly assign any value to.

The Master: He did.

Mr. Ransom: If he did assign a value to some of these buildings I would like to have it appear which ones.

The Master: Objection overruled.

By the Master:

Q. Mr. Quinn, did you assign a separate value to the 28130
particular buildings, or did you value all the buildings together?

A. I figured all the buildings and added up the valuation.

Q. You figured the buildings separately?

A. Yes, separately.

Q. Tell us how you did it?

A. I figured one building 184 by 496.

By Mr. Ransom:

Q. Will you indicate what one that is?

A. I can't do that. They were, 184 by 486; 30 by 92; 23 by 25; 46 by 100.

By the Master: 28131

Q. What did you do, take the total area?

A. Yes, sir.

Q. And took a flat figure for that area?

A. Yes, sir.

Q. And then lumped it altogether?

A. Yes, sir.

Q. What was your lump figure?

A. $225,000.

Mr. Ransom: I object to the answer on the ground that it is incompetent and immaterial and no foundation laid. The witness has not in-

dicated on the record what buildings he assigned a value to, and he has not given any indication or basis on this record for the giving of opinion testimony regarding it.

The Master: Objection overruled.

Mr. Ransom: Exception.

By Mr. Chambers:

Q. Was the valuation you have just given on the buildings on that lot the full value of the buildings as of October 1, 1918, in your judgment and opinion?

28133 Mr. Ransom: I object to the question. He has not said he has given the value of all the buildings on the lot.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. To the best of my knowledge.

Q. That was the full value in your opinion?

A. Yes, sir.

Q. What else did you value on that lot by way of improvements as of October 1, 1918?

A. Machinery and equipment.

Q. Any holders?

A. No, sir.

28134 Q. Just machinery and equipment?

A. Yes, sir.

Q. Did you place a value upon the machinery and equipment?

A. Yes, sir.

Q. Did you look it over?

A. I was in the building.

The Master: And saw that it was there?

A. Saw it was there, to the best of my knowledge.

The Master: And then you took that list?

The Witness: Yes, sir.

Q. And checked it up to see if the things were there?

A. I didn't check it up individually, but I went in and went around the building and took the list.

Q. This list, from whom did you get that this year?

A. It was submitted to me through the department.

Q. Do you know who had it?

A. I presumed it came from the Corporation Bureau of Real Estate.

Q. Did you keep that list? 28136

A. No.

Q. It goes back to the bureau?

A. That goes back to the bureau.

Q. Do you put your initials on it or anything?

A. Not necessarily; sometimes we do.

Q. Will you please give the valuation you placed upon this lot and block for all the improvements as of October 1, 1918?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of this lot as of October 1, 1918, with all the improvements thereon? 28137

Mr. Ransom: Objected to on the same grounds as previously urged to this question.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you assess that lot, Block 978, Lot 6, for 1920 taxes?

A. Yes, sir.

Q. Was the size of the lot the same as in 1918?

A. Yes, sir.

Q. What value did you place upon it unimproved as of October 1, 1919?

A. $365,000 for the land.

Q. Then did you value the improvements on it?

A. Yes, sir.

Q. Were the same improvements on it as the year before?

A. Yes, sir.

Q. You fixed the value of the buildings just as you did in 1918?

A. Yes, sir.

28139 Q. What value did you place upon the buildings?

Mr. Ransom: I make the same objection as before.

Q. On all the buildings on that lot, that is, October 1, 1919?

A. $225,000.

The Master: Was that the same as the year before?

The Witness: Yes, sir.

Q. Was that in your judgment the full value of all the buildings on that lot as of October 1, 1919?

A. Yes, sir.

Q. Was the figure that you have given the full 28140 value of that lot unimproved as of October 1, 1919?

A. Yes, sir.

Q. Did you place a value upon the machinery and equipment in the buildings?

A. Yes, sir.

Q. Separate from the buildings?

A. Yes, sir.

Q. Will you give that value that you placed upon the machinery and equipment?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of the machinery and equipment on that lot as of October 1, 1919?

Mr. Ransom: Objected to.

The Master: Same ruling. I assume, Mr. Quinn, that you fixed the value in the same way as you did the year before?

The Witness: Yes, sir.

The Master: By this list that was given to you?

The Witness: Yes, sir.

Mr. Chambers: Exception.

28142

Q. Block 979, Lot 1, did you place a valuation upon that lot as of October 1, 1919? First of all, you testified to the value of the unimproved land, didn't you, last summer?

A. Yes, sir.

Q. Do you remember now what you did?

A. Yes, sir.

Q. What improvements did you find on that lot and block as of October 1, 1918?

A. I found that that block was entirely covered with buildings, with a two-story building.

Q. Entirely covered with a 2-story building?

A. Yes, sir.

28143

Q. Did you place a value upon that building?

A. Yes, sir.

The Master: Was that filled with machinery?

The Witness: Yes, sir.

Q. What kind of a building was it, brick?

A. Yes, sir.

Q. Brick structure?

A. Yes, sir.

Q. And you placed a value of your own upon it, excluding the machinery?

A. Yes, sir.

Q. What value did you place upon the building as of October 1, 1918?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Ransom: Is he testifying to the value of only one building on that lot?

The Master: He says there is one building, two stories high, that covers the entire block.

The Witness: That is the way I assessed it.

Q. You called it one building?

A. Yes, sir.

28145 Q. What value did you place on it as of October 1, 1918?

A. $370,000.

Q. Was that in your opinion the full value of that building as of that date?

A. Yes, sir.

Q. You valued the machinery and equipment in the building, did you?

A. Yes, sir.

Q. How did you do that, what method did you use?

A. On the equipment and machinery?

Q. Yes.

A. Information that I received by the list submitted, the same method as described.

28146 Q. Will you give the assessed value of that lot and block as of October 1, 1918, with all the improvements thereon?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of that lot with the improvements thereon as of October 1, 1918?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. You assessed that for the 1920 taxes, didn't you?

A. Yes, sir.

Q. What value did you place upon the land unimproved for 1919, as of October 1st, for the 1920 taxes?

A. $430,000.

Q. Was that in your opinion the full value of that land unimproved as of that date?

A. Yes, sir.

Q. What improvements did you find on it, the same as the previous year? 28148

A. Yes, sir.

Q. Did you value the buildings as of October 1, 1919?

A. Yes, sir.

Q What value did you place upon the buildings as of that date?

Mr. Ransom: Objected to.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. $370,000.

Q. Was that in your opinion and judgment the full value of those buildings as of that date?

Mr. Ransom: Objected to. He has not said, "buildings"; he said he valued only one building. 28149

The Master: Objection overruled.

A. Yes, sir.

Q. Of all the buildings on there, whether you call it one or half a dozen?

Mr. Ransom: I object to that as an effort to lead the witness. Here are separate buildings on this, and he has testified regarding only one.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Master: In your opinion you gave the full value?

The Witness: Yes, sir.

Q. Of all the building or buildings on it?

A. Yes, sir.

Q. Were the dimensions of the lot the same in 1919 as they were in 1918?

A. Yes, sir.

Q. Did you exclude in 1919 the Avenue B extended, as is shown on your map?

A. Yes, sir.

28151 Q. So that the boundary of that lot on East 21st Street is 666 feet?

A. Yes, sir, on 21st Street.

Q. And on 22nd Street it is 594 feet 7 inches?

A. 594 feet 8 3/4 inches.

Q. On the easterly end and on Avenue B extended is it 112 feet 3 1/4 inches?

A. Yes, sir, 5 1/4 inches.

Q. Yours is a little different?

A. 112 feet 5 1/4 inches.

Q. And then you have a line?

A. An oblique line.

Q. Yes, from 22nd Street down to that line (in-

28152 dicating), and from Avenue B extended on the west you have a horizontal slanting line?

A. An oblique line. I have not got the dimensions on my map.

Q. You have not the dimensions of that?

A. No, sir.

Q. Can you give that?

A. No, not unless I scale it.

Q. What did you do with this other little triangle out here to the east of Avenue B extended? Is that Lot 27 or 29? There are two lots there, are there not?

A. Yes, sir.

Q. You did not assess those, did you, to anybody? Were those lots that belonged to the city?

A. I assessed 27 and 29. 29 is assessed in my book, in the books of records, to the City of New York; 27 is assessed to the New York Gas Light Company.

Q. The only point I wanted was neither Lot 29 nor Lot 27 was included in your assessment of Lot 1; they were not included in any way?

A. No, sir.

Q. Lot 27, I am going to ask you to give me that now. You assessed it to the New York & Queens you said? 28154

The Master: The New York Gas Light Company.

Mr. Chambers: Yes, that is the old company.

Q. What were your dimensions of that lot as of October 1st, 1919?

A. On 21st Street, 25 feet 3 inches.

Q. And four-tenths, is it not?

A. Well, plus or minus. I have not got that.

Q. On the westerly side—

A. Of Avenue B?

Q. 40 feet 10 3/8 inches?

A. Yes, sir. 28155

Q. 40 feet 10 3/8 inches; and on the hypothenuse of the triangle, have you got that?

A. No, I have not got that dimension.

Q. And then just to the east of that is another little strip?

A. A gore lot.

Q. Which is Lot 29?

A. Yes, sir.

Q. What did you assess that Lot 27 for, unimproved, as of October 1st, 1918?

A. $6,000.

Q. Did it have any improvements on it?

A. No, sir.

The Master: How about 1919—October 1st, 1919?

The Witness: The same.

Q. Are those values that you have just given for Lot 27 the full values of that lot as of those dates?

A. Yes, sir.

Q. Block 987, Lot 37. Have you found that, Mr. Quinn?

A. Yes.

28157 Q. Did you assess that for 1919 taxes?

A. Yes, sir.

Q. Did you testify about that lot unimproved last summer?

A. Yes, sir.

Q. Were there any improvements on it as of October 1st, 1918?

A. Yes, sir.

Q. What improvements were on it as of that date, that you found?

A. I found four buildings and a small tank.

Q. What kind of buildings, of what material?

A. Brick, concrete.

28158 Q. Did you value those separately from the tank?

A. Why, yes, sir. This was a government building that was placed or built there by the United States Government on this plant; what they call a TNT plant, I suppose.

Q. Were those the only buildings you found on it?

A. Yes.

Q. And the tank?

A. Yes.

Q. You did not assess the government buildings, did you?

A. Yes, sir; I did.

Q. Oh, you did.

A. I did.

Q. Did you assess that lot for the 1920 taxes?

A. Yes, sir.

Q. What did you value that lot unimproved for the 1920 taxes?

A. Unimproved?

Q. Yes.

A. $105,000.

Q. Were the dimensions the same as the previous year?

A. Yes, sir. 28160

Q. And you assessed it with the improvements on for that year?

A. 1920; yes, sir.

Q. And all the improvements were government buildings?

A. No, sir.

Q. What was it?

A. Some buildings that belonged, as I presume, to the New York Gas Light Company, or the Gas Company.

Q. Can you pick out those buildings?

A. I cannot, sir, exactly.

Q. You cannot segregate the different buildings? 28161

A. No, sir; I cannot.

Q. Did you value the buildings all in a lump?

A. I valued the buildings that were there prior to the construction of the government TNT plant.

Q. What value did you place upon those that were there? What buildings were those, prior to the erection of the government buildings?

Mr. Ransom: Objected to as irrelevant and incompetent.

Mr. Chambers: As of October 1st, 1918.

The Master: Overruled.

Mr. Ransom: He does not describe what kind of buildings they were.

The Master: He just asked him to describe them.

Mr. Ransom: No, he asked him to give the value of them.

A. To the best of my knowledge—the size you mean, Mr. Chambers?

Q. Yes, what you found there before the government buildings were erected.

A. When I was assigned to this district the government
28163 work was under construction and was finished during the year.

Q. Can you give a value on the buildings that were there before the government constructed the new buildings?

Mr. Ransom: Objected to. There is no description of buildings, as to what they are, what kind they are, what is in them, or on what basis he valued them.

The Master: I will let him answer this question.

Mr. Ransom: What he may call a building is a very large gas oil storage tank. I do not know
28164 what he means by "building."

A. Kindly repeat that question, Mr. Stenographer.

Q. Can you give a value on the buildings that were there before the government constructed the new buildings, as of October 1st, 1918?

The Master: Do not give it, but can you give it?

The Witness: Yes.

By the Master:

Q. What kind of buildings were they?

A. They were small buildings, and a small tank.

Q. Did you independently value the buildings, or was that on the list given to you by Mr. Cremen?

A. I took this into consideration and also received some information from the list which I looked at, and I went and investigated myself and figured those buildings at a certain amount.

By Mr. Chambers:

Q. Give me that amount now?

Mr. Ransom: I object to it as incompetent.

The Master: Let us have the size of the buildings.

The Witness: A small tank and one building 11 feet 9 by 45, one 30 by 63, and 18 by 18, concrete foundation. 28166

By the Master:

Q. This tank, did you value the tank independently of the list? Did you value this tank independently of some statement that you had?

A. No, that was considered in the statement.

Q. How about the buildings?

A. The buildings I considered when I went over them myself.

Q. Did you separate your figures between the tank and the buildings and give your figures separately?

A. No, sir, they are not; they are all taken together.

The Master: Mr. Chambers wants to know what you valued the buildings at. 28167

Mr. Ransom: I object to the question if there is such a question, because it affirmatively appears that he did not value the buildings separately.

The Master: He just said he did.

Mr. Ransom: No, he valued the buildings, one of the buildings being a tank building.

The Master: Oh, that is right.

Q. The figure that you have includes everything, does it?

A. Yes, that is the idea.

28168 Joseph Quinn, Direct.

By Mr. Chambers:

Q. What did you get from the list?

A. I cannot state.

Q. What you got from the list?

A. No.

Q. Did you form your independent judgment of it?

A. Yes, I formed my judgment. I do not know what I received from the list at all. I think I got a look at the list, but I went over it and formed my own opinion of it.

Q. Then give us the value that you placed upon these
28169 buildings?

Mr. Ransom: Objected to as irrelevant and incompetent.

The Master: Including the tank.

A. Including the tank?

Q. Yes.

A. It is a very small building.

Q. Well, it was a building, wasn't it?

A. You asked me what improvements were on the lot, and I said that small tank was on the lot, with these other buildings.

Q. Yes, and what value did you place upon it?

Mr. Ransom: Objected to as incompetent.

28170 The Master: Both the buildings and the tanks.

Mr. Chambers: Yes.

Q. Was it a tank or a tank building? I did not understand. You said tank building?

A. It was a small tank. The purpose for which it was used I do not know, but it may have been used, understand, afterwards, in conjunction with the government plant. I am not sure of that.

Q. It was not a gas holder, you do not mean?

A. It was in the shape of a gas holder, but whether it was used as a gas holder or not I am not positive.

Q. How large was it?

Mr. Ransom: What diameter?

A. Well, I have not got the diameter. It was very small.

Mr. Ransom: Fifty feet in diameter?

Mr. Chambers: I suggest counsel keep off the grass. I will handle this situation.

The Witness: I could not say what the diameter was.

Q. Did you give it any value at all, the tank?

Mr. Ransom: Objected to. It affirmatively appears he did not.

The Master: Objection overruled. 28172

Q. Or did you value it without giving that any value?

A. It was assessed in conjunction with the other buildings, the small buildings.

Q. Did you give it any separate value?

A. No.

Q. Then now state what you valued the buildings at?

Mr. Ransom: Objected to as incompetent.

The Master: Sustained.

Mr. Chambers: He said he did not give it any value.

The Master: He does not say what you say at all. He said he did not give it any separate value. 28173

Q. Well, did you give it any value at all, or did you value the buildings and exclude that entirely from your valuation?

A. No, I considered that with the others, with the small buildings.

Q. You gave it some value?

A. Yes.

Q. With the others?

A. Yes.

Q. State the value you placed upon the improvements upon that lot as of October 1, 1918?

Mr. Ransom: Objected to as incompetent and on the other grounds stated.

The Master: Sustained.

Q. Are you able to say what was the value of the buildings upon that lot as of October 1, 1918, or rather the improvements upon that lot?

Mr. Ransom: Objected to on the grounds previously urged.

The Master: Sustained.

28175 Mr. Chambers: Exception.

Q. In 1919, how much did you value it? Were those buildings removed that you have spoken of?

A. No, sir.

Q. They were still there?

A. They were still there; yes, sir.

Q. Then in addition there were the government buildings?

A. Yes, the government buildings were there.

Q. Were those buildings there before the government buildings was used, did you notice?

A. I could not say that, because it was all screened in. That entire plot is screened in with a wire screen.

28176 Q. Did you go in and look around and examine the buildings?

A. I did for 1919.

Q. Was the tank still there?

A. The tank was still there.

Q. Were the same buildings there that were there before?

A. To the best of my knowledge.

Q. Plus the government buildings?

A. And the government buildings were there in 1919, too.

Q. And you placed a valuation upon all that, did you?

A. Yes, sir.

Q. How did you value the old buildings that were there before the government in 1919?

Mr. Ransom: Objected to as fully covered.

Q. (Continued.) Separate from the tank, or with it, or how?

A. With it.

Q. Just the same as you did in 1918?

A. Yes, sir.

Q. Are you able to give the value including the 28178
buildings erected by the government?

A. No, sir.

Q. Are you able to give the value of all the improvements on that lot as of October 1, 1919, excluding the government buildings?

Mr. Ransom: Objected to. It affirmatively appears that he cannot.

The Master: Sustained.

Mr. Chambers: Exception.

Q. Block 989, Lot 1, have you that?

A. Yes, sir.

Q. Did you value Block 989, Lot 1, as of October 1st, 1918? 28179

A. Yes, sir.

Q. Did you testify about that this summer?

A. Yes, sir.

Q. What improvements did you find on that lot?

A. I found a gas tank and buildings.

Q. Some buildings. What dimensions did you use on 16th Street, 261 feet or 235 feet?

A. For Lot 1?

Q. Yes.

A. In 1918?

Q. For the 1919 assessment?

A. 235 feet on 15th Street and 235 feet on 16th Street, 200 feet 6 inches—

Q. On Avenue C?

A. On Avenue C.

Q. The same dimensions in the rear line, front and rear are the same?

A. Yes.

Q. On Avenue C?

A. Yes.

Q. What buildings did you find on that on October 1st 1918? You said there were buildings?

28181 A. There were small buildings 30 by 50 and 25 by 60 and 30 by 30.

Q. And are those all the buildings you found on there?

A. Yes, sir.

Q What value did you place upon those buildings as of October 1st, 1918?

Mr. Ransom: I object on the ground that it affirmatively appears by the proof already in the record that these buildings are of a special kind peculiar to the gas industry, and the buildings on that property, including the purifier house, a meter house, a valve and governor house, a boiler house,

28182 a photometer house, that with respect to none of those buildings of that kind is this witness qualified, they being special buildings.

The Master: Overruled.

Mr. Ransom: Exception. And also on the ground that these are buildings of which an integral part are machinery, apparatus, appliances and equipment embodied in and attached to the building, so that this witness is not by any possibility qualified.

The Master: Overruled.

Mr. Ransom: Exception.

Q. Will you please state?

The Master: What value you put on the buildings?

Mr. Chambers: Yes.

A. $8,000.

Q. And that value of $8,000, was that in your opinion and judgment the full value of those buildings you found on there on October 1st, 1918?

A. Yes, sir.

Q. Now, what else was on there? Did you say anything besides the building?

A. Yes, a gasometer, or gas holder. 28184

Q. And did you value that?

A. Yes.

Q. How did you value it, the same as the other gas holder?

A. Yes, sir.

Q. Will you state, please, what value you placed upon that gas holder as of October 1st, 1919, for taxes?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of that gas holder upon that Lot 1, Block 989, as of 28185 October 1st, 1918?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you place a value upon that lot for the 1920 taxes, as of October 1st, 1919?

A. Yes, sir.

Q. Your dimensions changed, did they not?

A. Yes, sir.

Q. You added 26 feet on 16th Street, to the east, did you not?

A. 26 feet.

Q. Is that east or west? It is in the rear of the lot?

A. Yes, sir, it is on the eastern part of the lot.

Q. Then you added a strip 26 feet on East 16th Street, and on East 15th Street it is 35 feet, is that right?

A. That is right.

Q. And the easterly line of that strip is not a straight line, but beginning on East 15th Street, you would go 51 feet 6 inches, don't you?

A. Yes, sir, northerly.

28187 Q. Northerly?

A. Yes, sir.

Q. That is 35 feet on East 15th Street, then you go that distance, and then you go easterly how much, 9 feet, is it?

A. 9 feet.

Q. Then you go northerly again 145 feet?

A. That is right.

Q. To East 16th Street?

A. South side of East 16th Street.

Q. Yes. Now, were there any improvements on that strip that was added as of October 1, 1919?

A. I have the improvements all on Lot 1 for 1920;

28188 that is what you are referring to.

Q. Yes. What do you call that added parcel?

A. What do I call it?

Q. Yes. Did you give it another lot number?

A. Why, no.

Q. Still Lot 1?

A. It was thrown in with original Lot 1.

Q. Why was that done? I mean why did they add that strip to Lot 1 there for the 1920 taxes?

A. I presume that the Gas Company desired it apportioned.

Q. What valuation did you place on the whole block with that strip added for the 1920 taxes unimproved?

A. $169,000.

Q. Was that in your judgment and opinion the full value of that land as of that date?

A. Yes, sir.

Q. Did any of the improvements extend over on the added strip that you know? If it did or did not doesn't make any difference, so I will withdraw that.

Q. You found the same improvements on the new Lot 1 that you did in 1918, didn't you? I mean it 28190
would be the same, wouldn't it? Were some of the improvements on the strip added?

A. Yes, sir.

Q. What improvements have you got on the new Lot 1 as it appeared in 1919, October 1st?

A. Do you mean the value of them?

Q. No, first tell me what they were, what buildings were on it?

The Master: Have you got a memorandum of the additional buildings?

Mr. Chambers: We have got already what was on old Lot 1.

A. The buildings, as I found them on Lot 1 are 28191
four.

Q. Can you describe them?

A. I cannot, all of them.

Q. Well, didn't you give four buildings before?

A. I apparently gave three.

Q. Then apparently there is another building. Did you value all those buildings?

A. Yes, sir.

Q. Separately and distinct from the holder?

A. Yes, sir.

Q. And your own valuation, is it?

A. Yes, sir.

Q. Give that to me, please, as of October 1, 1919.

Mr. Ransom: I object on the grounds already stated, and on the further ground that it does not appear that this is exclusive of machinery, apparatus and equipment.

The Master: Overruled.

Mr. Ransom: Exception.

A. The buildings for 1920 assessment, $13,000.

Q. That is exclusive of the holder?

A. Yes, sir.

The Master: And equipment?

28193 The Witness: And the equipment.

Q. So that that covers everything you found on the property by way of improvement except the holder and the equipment in the buildings?

A. Yes, sir.

Q. Did you value the equipment in the buildings?

A. Yes, sir.

Q. And the holder?

A. Yes, sir.

Q. In what way? Where did you get the information from?

The Master: The same way you did for 1918?

The Witness: Yes, sir.

28194 Q. The same way as you did the 1918 figures?

A. Yes, sir.

Q. Give that value, will you, that you placed upon all the improvements on this lot?

Mr. Ransom: Objected to on the grounds already indicated.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of that lot as of October 1, 1919, with all the improvements thereon which you have described?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Between the 1919 tax and the 1920 tax, did you change your unit of valuation on that lot?

A. No.

Q. You did not change the unit?

A. No.

Q. So that you applied your units to the additional piece?

A. Yes.

Q. Have you got Block 1107, Lot 7, for any year? 28196

A. Yes.

Q. Prior to 1913? 1906 for that, if you have got it. Are you too tired? Would you like to have an adjournment? I suggest we adjourn for the day.

A. I haven't the records here for 1906. The earliest record I have got is 1911 here, unless they are over there (indicating).

Q. Did you appraise prior to that?

A. No.

Q. Did you appraise in 1911?

A. Yes. You said 1906, I understood you to say.

Q. I don't want it if you didn't do it.

A. No, I didn't do it. 28197

Q. Well, start with 1911, will you?

The Master: What years did you appraise that?

The Witness: 1911.

Q. Block 1107, Lot 7, for 1911, have you got that?

A. Yes, sir.

Q. Did you place a valuation upon that block and lot for the 1912 taxes, or was it the 1911 taxes?

A. You mean that I assessed that property in 1911 as of October 1, 1911?

A. No.

Q. As of the second Monday of January, 1911?

A. Second Monday of January, 1911.

Q. What was it at that time?

The Master: What was what?

Mr. Chambers: The property.

The Master: What do you mean?

Mr. Chambers: That is what I want to know. It is a bulkhead. I want to have him tell me.

Q. What was it at that time?

The Master: Do you mean whether it was upland or land under water, or bulkhead?

28199 Mr. Chambers: Yes.

A. Do you want me to describe it?

Q. Yes, what it was?

A. It was a bulkhead with an extension out into the water, coal house, as you would call it, coal chute, an elevator, to hoist up and down.

Q. Did you tell me what tax that was for?

A. In 1911.

Q. 1911 tax?

A. For 1911, yes, sir, the assessed valuation for 1911.

Q. That would be the second Monday in January, the valuation as of that date?

28200 A. The second Monday in January, 1911.

Q. What was that value, unimproved?

A. $130,000.

Q. Then did you assess it with the improvements on it, or didn't you do that?

A. Yes, sir.

Q. What valuation did you place upon it with the improvements?

Mr. Ransom: I object to that.

The Master: How did you fix the value—by a statement given to you?

The Witness: No, on my own judgment.

The Master: As to hoisting machinery?

The Witness: The structural work was the coal chute—

Mr. Ransom: Or tramway?

The Witness: Tramway, yes, I don't know the name of it.

Mr. Ransom: I object on the ground that it affirmatively appears from the testimony in this case that upon this property there was elaborate coal handling apparatus, coal unloading apparatus, tramway, hoist, chutes, and also a considerable number of tanks in connection with the oil 28202
handling apparatus at that time.

The Master: A considerable number of what?

Mr. Ransom: And a tar separator.

The Master: I haven't heard the witness say all those things.

Q. What did you find on it?

A. I found on it the coal chutes and elevator.

By the Master:

Q. You found all this coal handling apparatus?

A. Yes, sir.

Q. On what basis did you attempt to figure the value of coal handling apparatus?

A. I put a figure on the structural part of it? 28203

Q. That is all?

A. Yes, sir.

The Master: I won't take the witness' idea as to that value.

By Mr. Chambers:

Q. Were you giving me Lot 7?

A. Yes, sir.

Q. Where is the location of that?

Mr. Ransom: That has already been covered several times.

The Master: Let us have it.

A. Between 41st and 42nd Streets.

Mr. Chambers: I consent that whatever he said about Lot 7, Block 1107 be stricken out?

Mr. Ransom: I object to its being stricken out.

Mr. Chambers: We don't want it, it was a mistake. Is it stricken out?

The Master: Do you ask that it be stricken out? You say you consent that it be stricken out.

Mr. Chambers: I will withdraw it.

The Master: Just leave the record stand as it is.

28205 Mr. Ransom: Exception.

Q. Now, Block 1107, Lot 28.

Mr. O'Brien: Your Honor, it is quite apparent we won't reach Mr. Miller tonight.

Mr. Ransom: I would like to suggest an evening session to clear up some of these things.

The Master: No; tonight, there is no use talking about it. I have an engagement for eight o'clock.

Mr. Ransom: The record cannot show the continuous delay that is taking place due to the tactics of the defendants.

Mr. O'Brien: 293 pages yesterday does not
28206 show any delay, and the record today does not show any delay.

Mr. Ransom: Unfortunately it does not.

The Master: I want one witness to stay here.

Q. Lot 28, where is that located? Is it between West 46th and West 44th Streets?

A. No, sir.

Q. Where is it?

A. Between West 45th and West 46th Streets.

Q. That is part of it, isn't there some more of it? All right, now let us take Lot 28. Give me your dimensions for that as you assessed it on the second

Monday in January, 1911. It is Lot 28 I am speaking of?

A. 200 feet 10 inches by irregular, I have it.

Q. Yes, 200 feet 10 inches, between the two streets?

A. Yes, sir.

Q. Then which way do you go?

A. Out towards the river.

Q. How far?

A. It has all been obliterated since that time; it is pretty hard for me to decide now.

Mr. Ransom: I object to this inquiry, anyway. It does not relate to property which this 28208
company owns or which is within the purview of this case. A good part of today has been spent with proof of values of property that the company does not own, and does not claim in the case.

Mr. Chambers: Will the complaint admit that the company does not claim it and will not claim it throughout this case?

The Master: Objection overruled.

Q. Can you tell me the dimensions? You gave me one 200 feet, 10 inches. It goes right straight out in the water?

A. 493 feet, 4 inches, and 509 feet, 10 inches. 28209

Q. Was it all water, or what was it? Was it land under water?

A. No, there was some upland there.

Q. But some of it was land under water, was it?

A. Yes, sir.

Q. How did you value it? Did you separate the land under water from the upland, or did you value it altogether?

A. In 1911?

Q. Yes, unimproved I am speaking of?

A. I figured it all as one piece.

Q. What value did you place upon it?

A. $105,000.

Q. That is unimproved?

A. Yes, sir.

Q. Was that in your judgment the full value of that block and lot as of the second Monday in January, 1911?

A. Yes, sir.

Q. Were there any improvements on that Lot 28?

A. No, sir.

Q. No improvements?

28211 A. No, sir.

Q. So you did not value it with improvements?

A. No, sir.

Q. Now, 1912, the same lot, unimproved, what valuation did you place upon it?

A. $105,000.

Q. That is unimproved?

A. Unimproved.

Q. Was the lot the same as the previous year?

A. Yes, unimproved.

Q. The same dimensions?

A. Yes, sir.

Q. Was that in your opinion and judgment the

28212 full value of that lot as of the second Monday in January, 1912?

Mr. Ransom: I object to the question on the ground that I cannot hear it. I hope there is nothing secret about it. I would like for us all to be in this party.

The Master: Objection overruled. I did hear it.

Mr. Ransom: You were not so near to Mr. O'Brien.

A. As of the 1st of October, 1911?

Q. Rather than the second Monday in January of that year?

A. Yes, sir, first of October, 1911, for the 1912 assessment.

Q. Were there any improvements on that lot and block that year?

A. No, sir.

Q. Now, the next year, 1913. Was it the same dimensions?

A. Same dimensions.

Q. What valuation did you place upon it for the 1914 taxes? 28214

A. 1913 assessment, that was out October 1, 1912.

Q. What valuation did you place upon it?

A. $185,000.

Q. Was that in your judgment the full value of that lot and block as of that date?

A. Yes, sir.

Q. Any improvements on it?

A. No, sir.

Q. Now, the next year, the taxes for 1914?

A. As of the 1st of October, 1913, for the 1914 taxes.

Q. What was the value as of that date, of that block and lot? 28215

Mr. Ransom: I object to it on the ground that it affirmatively appears that this company did not own this property after August 1, 1913.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. I placed a value on the 1st of October, 1913, of $153,000.

Q. Any improvements on it?

A. No, sir.

Mr Ransom: I move to strike out the answer on the ground that it is subsequent to the company's period of ownership.

The Master: Motion denied.

Q. Can you give me, Mr. Quinn, in 1911, this piece of property here between West 45th Street and West 44th Street, the bulkhead from your map? Can you tell me the lot number of that?

Mr Ransom: If you are interested, I think it is Lot 23.

Q. You find Lot 7, Block 1092 is located where?

A. For 1911?

The Master: He gave us all that and you withdrew the testimony.

28217 Mr. Chambers: No, not Block 1092. That was Block 1107, Lot 7.

The Master: That is right.

Q. Where is Lot 7, Block 1092, located?

Mr. Ransom: That has been fully gone into.

The Master: I will allow it again.

Mr. Chambers: When was it gone into?

The Master: Never mind, Mr. Chambers.

Mr. Ransom: Several months ago.

Q. Mr. Quinn, can you describe it?

A. For what year, Mr. Chambers?

Q. For 1911, the second Monday in January.

A. Why, no such lot existed in 1911.

28218 Q. When does it begin to exist?

A. As of 1914.

Mr. Ransom: After the company no longer owned the property.

Q. Keep your map open right there.

A. Yes, I will.

Q. Block 1093, just east of the bulkhead line, between West 46th Street and West 45th Street; have you that?

A. No, I have not. Do you want that?

Q. Yes, as of 1911.

A. As of 1911 now?

28219

Q. Yes, if you assessed it.

A. On the easterly side of Twelfth Avenue?

Q. Yes.

The Master: The easterly side of the bulkhead, he said. Which is it, the easterly side of the bulkhead or the easterly side of Twelfth Avenue?

Mr. Chambers: Either the westerly side of Eleventh Avenue or the easterly side of the bulkhead—or the easterly side of Twelfth Avenue, I suppose, if there was a Twelfth Avenue. I do not see Twelfth Avenue on here.

By the Master:

28220

Q. In 1911, Mr. Quinn, your map showed a lot in Block 1093 between 45th and 46th Streets, running west to Twelfth Avenue, did it not?

A. Yes, sir.

Q. And running how far east?

A. On the northerly side of 45th Street 575 feet easterly from the northeast corner of Twelfth Avenue and 45th Street.

Q. Could you tell how far that was from Eleventh Avenue? From there to there (indicating)?

A. Yes, sir.

The Master: That is the lot we had before. Block 1093, Lot 1, we had before, with that 25-foot end to it.

28221

Mr. Chambers: That is right, that is part of it.

Mr. Ransom: The situation was that was Block 1093, Lot 1, down to the time the city took it. Down to the time the city took it it was 1093-1.

The Master: That is just what he has given you.

Q. Looking at the paper Mr. Chambers has in his hand, you ran from the point beginning with Parcel 1, 225 feet to the corner of 11th Avenue, westerly

825 feet to what was then Twelfth Avenue; isn't that so?

A. No, I run 575 feet to what was then Twelfth Avenue.

Q. Yes, to what was then Twelfth Avenue.

A. Yes.

Q. You cannot show Mr. Chambers on his map any more definitely where that ran, can you?

A. Absolutely not.

Q. Except to scale it off to that point (indicating)?

A. Yes, sir.

28223 The Master: That is all he can tell you.

By Mr. Chambers:

Q. What lot do you call that?

A. I call that Lot 1.

The Master: It is the same as you had before.

Mr. Ransom: That was the lot down to the time the city took it.

Mr. Chambers: That is the one he has given me already?

The Master: Yes.

Q. You have given me that already?

A. No, sir; I did not.

The Master: Did you not give him that, with

28224 that 75-foot addition?

The Witness: No, I gave him Lot 9.

Q. Give me that lot complete now.

A. Lot 1 complete?

The Master: Yes, Lot 1 as it stood in 1911.

Q. And give me the dimensions.

A. Beginning at a point on the northeasterly corner of Twelfth Avenue and 45th Street, running easterly on 45th Street 575 feet.

By the Master:

Q. To a point?

A. To a point 225 feet west of Eleventh Avenue.

Q. West of Eleventh Avenue?

A. That is right. Thence northerly 100 feet 5 inches.

Q. Thence westerly?

A. Thence westerly 75 feet; thence northerly 100 feet 5 inches.

Q. To 46th Street?

A. To 46th Street, to the south side of 46th Street. Thence westerly 500 feet to the easterly side of Twelfth Avenue; thence southerly along Twelfth Avenue 200 feet 10 inches to the point or place of beginning. 28226

The Master: Now you have got it.

By Mr. Chambers:

Q. What did you assess that for in 1911?

A. That is known as Block 1093, Lot 1.

By the Master:

Q. For 1911.

A. For 1911?

Q. You assessed that as of the second Monday of January, 1911?

A. Yes.

Q. For how much, unimproved?

A. $375,000.

Q. Any improvements on that? 28227

A. Yes, sir.

Q. What were they?

A. Block 1093, Lot 1?

Q. Block 1093, Lot 1, for 1911. Do not give us the amount of the assessment on the improvement, just tell us what the improvements were.

A. Block 1093, Lot 1, 1911?

Q. The improvements—what were they?

A. Unimproved.

By Mr. Chambers:

Q. No improvement?

A. I will give you the land value first.

Q. You gave me that.

A. $375,000.

Q. What improvements were on it?

A. With improvements—

Q. No, what improvements?

A. There were four buildings and two tanks.

Q. Four buildings and two tanks?

A. Yes.

Q. Did you examine the buildings and fix a value on the buildings?

Mr. Ransom: I object to his giving the values
28229 of the buildings.

The Master: He is not giving them yet.

Mr. Ransom: Well, the same question might be taken as asking for the value.

The Master: Then I will strike it out.

A. Yes, sir.

By the Master:

Q. Do you mean that you examined the buildings and appraised them independently of any statement given you by the office?

A. No, I considered the statement given me by the office, too.

Q. Did you give one lump sum there for the whole
28230 thing?

A. Yes, sir.

Q. Based upon that statement?

A. Yes, sir.

By Mr. Chambers:

Q. One lump sum for the tanks and buildings?

A. Yes, sir.

Q. Altogether, you mean?

A. Yes, sir.

Q. You did not separate the buildings from the tanks?

A. No, sir; not in this case, in 1911; no, sir.

Q. Can you give me the value of the buildings altogether, as you appraised them?

Mr Ransom: I object.

The Master: Sustained.

Q. What was the value of that land with the buildings thereon, in 1911?

Mr. Ransom: Same objection.

The Master: Sustained.

Q. In 1912 what was the value of the lot and was it the same size as in the previous year?

A. For the 1912 assessment, land $400,000.

Q. Was that in your judgment and opinion the full 28232
value of that land?

A. Yes, sir.

Q. Without the improvements?

A. Yes, sir.

Q. What improvements were on it, just the same as the previous year?

A. Yes, sir.

Q. You valued it in the same way?

A. Yes, sir.

Q. What value did you place upon the land with the improvements for the 1912 assessment?

Mr. Ransom: Objected to.

The Master: Sustained. 28233

Mr. Chambers: Exception.

Q. Are you able to say what the value of the land was with all improvements for the 1912 assessment?

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Was the size the same in 1912, did you say?

A. Yes, the size was the same.

Q. This is the 1913 tax.

The Master: The other was the 1912 tax. Now ask him about the 1913 tax.

A. The 1913 was land $400,000.

28234 Joseph Quinn, Direct.

The Master: Was it the same?

The Witness: Yes.

Q. Were the improvements just the same as the year before?

A. Yes, sir.

The Master: And you valued this the same way?

The Witness: Yes, sir.

Q. Are you able to say what the value was of the land with improvements?

Mr. Ransom: Objected to.

28235 The Master: Same ruling.

Mr. Chambers: Exception.

Q. What was the value of the land with the improvements?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Is the value that you gave, $400,000, the full value of the land unimproved as of that date, October 1, 1912?

A. Yes, sir.

Q. To the west, on the other side of Twelfth Avenue, was lot 28, which you gave me, is that right—

28236 over between those two same streets, West 46th and West 45th Streets; and West of Twelfth Avenue was that lot 26, isn't that it—Block 1107, lot 28?

A. Yes, sir.

Q. Mr. Quinn, just turn to Block 1092, Lot 1, and give me the dimensions of lot 1?

A. Beginning on the north side of 44th Street, distant 125 feet from the northwest corner of Eleventh Avenue and 44th Street, running 100 feet 5 inches north, thence westerly 50 feet, thence northerly 100 feet 5 inches to the south side of 45th Street.

Q. Thence westerly?

A. Thence westerly 625 feet to the easterly side of Twelfth Avenue; thence southerly on Twelfth Avenue, 200 feet 10 inches to the northeast corner of 44th Street and Twelfth Avenue; thence easterly.

Q. On the northerly side of West 44th Street.

A. 675 feet to the point or place of beginning.

Q. That is lot 1, Block 1092?

The Master: As it was in 1911?

A. As of 1911.

Q. Yes. Did you assess that as of the second Monday in January, 1911? 28238

A. Yes, sir.

Q. What valuation did you place upon it unimproved?

A. $450,000.

Q. Was that in your opinion the full value of that lot as of that date, as of the second Monday in January, 1911?

A. Yes, sir.

Q. Any improvements on it?

A. Yes, sir.

Q. What improvements as of that date?

Mr. Ransom: Is this for the purpose of contradicting the testimony which they previously gave when they examined Mr. Alrich as their witness on this parcel of property? 28239

Mr. Chambers: We never examined Mr. Alrich as our witness.

Mr. Ransom: You did at page 7944 of the record.

The Master: I do not care anything about it, I will get the facts. You can call two or three witnesses to prove different facts by each one of them.

A. What is the question?

The Master: What improvements were there on there in 1911?

The Witness: Four large tanks and one small tank, and some buildings—five buildings.

Q. Did you assess the buildings separately, or did you lump them all in with the tanks?

A. Lumped them all in together.

Q. So you cannot segregate them?

A. No, sir.

Q. What value?

The Master: That was based on the same statement.

28241

The Witness: I have that statement before me.

Q. Did you form any judgment of your own about it?

A. No, sir, in 1911.

Q. And can you give the assessed values of that lot and block with improvements?

Mr. Ransom: Objected to on the ground previously indicated.

The Master: Objection sustained.

Q. Will you say what was the value of that lot and block with improvements in 1911?

28242

The Master: Same ruling.

Mr. Chambers: Exception.

Q. In 1912, what improvements, as of October 1, 1911? The value for the 1912 tax, was what you placed upon it unimproved?

A. $475,000.

Q. Was that in your judgment the full value of that lot and block as of that date?

A. Yes, sir.

Q. And were the same improvements on it as the previous year?

A. Yes, sir.

Q. And what value did you place upon the lot with the improvements?

Mr. Ransom: Same objection as before.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of that lot with the improvements on it as of that date?

Mr. Ransom: Same objection.

The Master: Same ruling.

Q. Now, the 1913 tax, that would be October 1st, 1912, valuation?

A. $475,000 unimproved. 28244

Q. Was that in your judgment the full value of that lot unimproved as of that date?

A. Yes, sir.

Q. The same improvements on it?

A. Yes, sir.

Q. Are you able to say what was the value of that lot with the improvements thereon as of that date?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, over across 12th Avenue, Mr. Quinn, between West 45th and West 44th Streets, what is the lot and block as of 1911? 28245

A. You mean west of 12th Avenue?

Q. Just south of Lot 28 there that you gave. You gave me Block 1107, Lot 28, west of 12th Avenue. Now, south of that, the next block, in other words, the west of this one you have just been giving me?

A. Lot 23, Block 1107.

Q. Did you assess that in 1911?

A. Yes, sir.

Q. Can you just give me the dimensions of that Lot 23, Block 1107?

A. 200 feet 10 inches by 488 feet 6 inches by 472 feet.

Q. Where is the dimension 472?

A. On the southerly side.

Q. On 44th Street?

A. Yes.

Q. And what value did you place upon that lot as of the second Monday in January, 1911, unimproved?

A. $105,000.

Q. Was that in your opinion the full value of that block and lot as of the second Monday in January, 1911?

A. Yes, sir.

28247 Q. Now, the value of that lot and block as of October 1st, 1911, for the 1912 assessment?

A. $105,000.

Q. Is that in your opinion the full value of that property, that lot, as of that date?

A. Yes, sir.

Q. Now, 1913, unimproved, that is October 1st, 1912 assessment?

A. My assessment on that was $184,000.

Q. Was that, in your opinion, the full value of that lot unimproved, as of that date?

A. Yes, sir.

Q. Were there any improvements on that during

28248 those three years?

A. No, sir.

Q. No improvements at all?

A. No, sir.

Mr. Chambers: Your witness.

The Master: Cross-examination adjourned until tomorrow at 9:30.

Adjourned to Wednesday, January 7, 1920, at 9:30 A. M.

Last Complainant's Exhibit 411.

Last Defendants' Exhibit AA47.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 28249

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 7, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 28250
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Chambers: You will remember the other day that counsel for the complainant stipulated voluntarily in open court that it would not be necessary for us to subpoena for attendance upon this trial any employee or officer of the complainant company—you remember that? 28251

The Master: Yes.

Mr. Chambers: I didn't see it in the record.

The Master: I remember it. Whom do you want?

Mr. Chambers: I understood that that stipulation was so broad that if we would name the man he would have him here without subpoena.

28252

Mr. Ransom: I made no stipulation on the record.

Mr. Chambers: You stated it in open court.

Mr. Ransom: It was not in open court. I said in a conversation between the Master, Mr. Chambers and myself, that you need not serve a subpoena upon any witness who is an employee of the company?

Mr. Chambers: Or officer.

Mr. Ransom: Or officer, so far as they are in any way under control. We cannot undertake to produce directors or trustees, but so far as wit-

28253 nesses who are in the employ of the company are concerned, if you will let me know within a reasonable time, as you would for the service of a subpoena whom you want, you will get him.

Mr. Chambers: I want Mr. Carter when we come to a point where we run out of witnesses, and I want Mr. Cortelyou.

The Master: When are you going to run out of witnesses? When do you want these witnesses to attend?

Mr. Ransom: They have got to give me notice just as they would on subpoena.

Mr. Chambers: Mr. Carter is here most of the

28254 time—

Mr. Ransom: Mr. Carter is not here most of the time.

Mr. Chambers: And Mr. Addicks I want. Suppose they be in attendance for Friday, all of them?

The Master: All right. Whom do you want, Mr. Addicks, Mr. Carter and Mr. Cortelyou for Friday morning?

Mr. Chambers: Yes. If we are not ready to reach them I will let him know on Thursday.

28255

The Master: No, if you are not ready to reach them and they are here, I will suspend what you have and let them go on. In other words, whatever day you say they shall be here I am going to suspend such other proof as you are taking so you can get rid of them.

JOSEPH QUINN, resumed the stand.

DIRECT-EXAMINATION BY MR. CHAMBERS CONTINUED:

Q. Mr. Quinn, these various amounts which you have given here for these various parcels of property unimproved, are those the sums for which, under ordinary circumstances in your judgment these parcels would sell if wholly unimproved?

28256

A. Yes, sir.

The Master: At the various times stated?

The Witness: Of course at the times stated.

Q. Do the various amounts which you have given represent your judgment as to the sum for which these parcels of land would sell under ordinary circumstances, with the improvements thereon, insofar as the Court allowed you to testify to them with improvements?

A. Yes, sir.

Mr. Chambers: That is all.

28257

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Quinn, you never have been in the gas business, have you?

A. No, sir.

Q. Have you ever had anything to do with the building of structures used in the gas business?

A. No, sir.

Q. Have you ever bought or sold the kind of buildings that are used in the manufacture or distribution of gas?

A. No, sir.

Q. Either as a broker or on your own account?

A. No, sir.

Q. Except as you have from time to time seen buildings of this sort in course of construction as you passed by in the course of your duties as a clerk or as a deputy tax commissioner, have you ever had anything to do with the erecting of buildings of the
28259 sort that are used in making and distributing gas?

Mr. O'Brien: I object to that as involving a lot of needless verbiage, including assumptions that are not in the record.

The Master: Objection overruled.

A. No, sir.

Q. Have you ever made any study of the operating expenses of this or any other gas company?

A. No, sir.

Q. Have you ever studied what the income of property used in the gas business is?

A. No, sir.

Q. You know nothing about that?

28260 A. No, sir.

Q. Now, with respect to Block 1070, Lot 5, you assessed the buildings on that lot from 1911 through 1917, did you not?

A. Yes, sir.

The Master: Where is that located?

Mr. Ransom: That is one of the parcels that the company no longer owns. I am not familiar with the precise location.

A. Yes, sir. It is on 41st Street between Tenth and Eleventh Avenues.

Q. And for the 1911 assessment and each of the assessments through the 1917 assessment you gave

the same value to the improvements on this property?

The Master: Is that what he testified to?

Mr. Ransom: Yes.

The Master: What is the use of asking him again.

Mr. Ransom: I am coming to it in a second.

Q. You found no occasion to assign a less value to these improvements by reason of their age?

A. No, sir.

Q. Now, with respect to Block 870, Lot 60, the general office building property. In making that 28262
valuation of the property with the building thereon, did you take into account the valuation which had been placed on the building by your predecessors on that district?

A. Yes, sir, I saw his assessment prior to making mine.

Q. Did you take into account the action of the City Board of Taxes and Assessments with respect to the value of the building on that property?

A. No, I appraised that with my own judgment.

Q. Had you any knowledge of the action taken by the Board of Taxes & Assessments of the City of New York in 1915, in reducing the assessment 28263
upon that building?

A. Only I knew that the books showed to me that it was reduced in 1915.

Q. Did you know why it was reduced at that time?

A. No, I did not.

Q. It was reduced, the books showed to you, by the Board after the assessor on the district had made his assessment?

A. I found the figures in my book which showed that there evidently was an application for reduction made.

Q. But in the course of placing this valuation upon that property for 1920, you did not ascertain the grounds upon which that reduction was made by the board?

A. I did not.

Q. And you did not take that reduction into account yourself?

A. No, sir.

Q. On what basis did you undertake to fix the value on this office building?

A. On the basis that I considered my judgment
28265 from my practical experience and from comparisons with other buildings.

The Master: You told me you figured it on the square foot area?

The Witness: On the square foot area.

Q. Did you know anything about what it cost to build?

A. No, sir, I did not.

Q. You figured it simply on the basis of square foot area of floor space?

A. Yes, sir.

Q. From what source did you get the square foot area of floor space?

28266 A. From what source?

Q. Yes.

A. Why, from our insurance maps.

Q. From what source did you get the figure per unit of floor space which you use?

A. From my own judgment.

Q. Was that a figure furnished to you by the Tax Department?

A. No, sir.

Q. Does the Tax Department furnish you any information or data of that sort?

A. No, sir, the Tax Department furnishes us with data, but we use our own judgment as to the factor, if that is what you are referring to.

Q. What was the factor that you used with respect to floor space in this building?

A. About $4.31.

Q. And you applied that uniformly throughout?

A. Yes, sir.

Q. All floors?

A. Yes, sir.

Q. Was the assessment which you made for 1919 higher or lower than that made by your predecessor? 28268

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: What has his predecessor got to do with the assessment?

A. The same.

Q. Is the unit of floor space which you used for this building one which you applied also to other buildings in that neighborhood?

A. You mean the building factor?

Q. Yes.

A. Not exactly; they all vary. 28269

Q. Just how did you determine, what facts, what conditions led you to reach the conclusion that the proper factor or unit of value per square foot of floor space for this building was $4.31?

A. Because of my judgment in dealing with other buildings and experience in the department, led me to believe that that nineteen-story building, after going through it, was worth about that sum.

Q. Did you take into account the income derived from it?

A. I figured on the construction.

28270 Joseph Quinn, Cross.

Q. That is, the figure you have given, as $4.31 a square foot?

A. Yes, that is what I figured it would be worth.

Q. Did you or did you not in arriving at that figure take into account the income which was derived from it?

A. No, sir.

Q. Or the income which might be derived from it?

A. No, sir.

Q. You are very clear about that?

28271 A. Yes, sir.

Q. You gave no consideration to its possible rental value, the sum for which it might be rented—you did not consider that?

A. No, I considered that that is what the property would sell for.

The Master: What was the square foot floor area?

The Witness: About 437,000.

Q. If this figure of $4.31 a square foot was what the property cost to build, you figured that was also the price per square foot for which it would sell?

A. I figured that the building, the land and the
28272 building would sell for the amount I had it assessed at.

Q. Did you figure that it would sell for what it cost to build? You said $4.31 a square foot was what it would cost to build this building?

A. That is what I figured.

Q. To build?

A. Yes.

Q. Did you figure that this building on this land, the land and the building would sell for the price which represented the assessed value of the land plus what it would cost to build the building?

A. Yes, sir.

The Master: What does office space rent for up there, have you any idea, ordinary office buildings of this kind? Would it be about two dollars, two dollars and a half or three dollars a square foot?

The Witness: I guess today it rents for probably three dollars.

The Master: Three dollars a square foot?

The Witness: Yes.

The Master: Do you know how many renting feet of space there is in this building?

The Witness: No. 28274

The Master: You say the total floor area is 437,000 square feet?

The Witness: Yes, sir.

Q. Now, Block 951, Lot 35, you gave yesterday a value for some improvements on that land. Will you describe all of the improvements to which you undertook to assign a value on that land?

A. There was a building on there 30 x 176.

Q. 30 x 176?

A. Yes, sir.

Q. Was that the only building?

A. Yes, sir.

Q. What kind of a building was that? 28275

A. Brick building.

Q. For what purpose was it used if you know?

A. To the best of my knowledge it was a stable and wagon yard.

Q. If there are any other buildings on the property you did not undertake to give any value to them?

A. No, sir.

Q. This figure of seven thousand dollars for the one building which you have indicated—that figure, $7,000, covers only your idea of the value of that one building?

A. Yes, sir.

Q. Block 1092, Lot 7, will you describe just what improvements are on that property?

A. What year was that?

Q. That was for 1914, I think, was your first year on the property. What improvements did you find there as of October 1, 1913?

A. Buildings and tanks.

Q. What were the buildings?

A. To the best of my knowledge there were a purifier and meter house, an office and engine house and condenser house and some tanks.

28277 Q. That is, when you made this assessment for the 1914 taxes, there was a purifier house?

A. To the best of my knowledge there was a building 45 by 45, two stories, a building 50 by 40, two stories, a building 50 by 35 feet, one and two stories, and one 17 by 43.

Q. What improvements were on there October 1st, 1914, when you assessed for the 1915 taxes, according to your records and recollection, if you have any? Same improvements?

A. For 1915, four large tanks.

Q. What buildings, if any?

A. The buildings were removed before October

28278 1st, 1914, as I can remember.

Q. So that for the year 1915 taxes and thereafter you did not give any value to any buildings on the property?

A. It was all on the tanks.

Q. That is, if there was a valve house on the property during all this period, with the apparatus and machinery or the valve house, you gave that no value?

A. Well, the machinery and the tanks were assessed.

Q. You gave no value to the building?

A. No. If I can remember rightly, the buildings were laying idle, I think, at that time.

Q. Well, did you give any value to the buildings?

A. No, sir. I put it all on the tanks and machinery.

Q. Were you under the impression that the buildings were idle?

Mr. O'Brien: He said so a minute ago.

A. Yes, sir, for the 1915 taxes.

Q. And is that true from that time on?

A. Up to 1917. 28280

Q. So there were buildings, you now recall, refreshing your recollection, from the records, but you gave to them no value?

Mr. Chambers: If the Master please, I don't mind, I would be glad to have you open the door, but you would not let the man testify to these buildings.

Mr. Ransom: He certainly did testify as to the buildings.

Mr. Chambers: Where do you find it? You are mistaken.

Mr. Ransom: I am trying to find out.

Mr. Chambers: Go ahead and ask him what value he put on the buildings. 28281

A. For 1915 I placed a value on the tanks.

Q. Do your records indicate to you that there were buildings on the property, to which you gave no value?

A. Yes, small buildings, probably the valve house or something like that.

Q. Turning to Block 1157, Lot 1, which is at 65th Street and West End Avenue, when you assessed that property for 1917, what buildings did you undertake to assign a value to? What buildings did you find there?

28282 Joseph Quinn, Cross.

A. I found there the engine house and an office. That is the best of my knowledge, that I can remember.

Q. That is all you found there and all you placed a value on?

A. You are not referring to the gas holders there?

Q. You found some holders, you mentioned those yesterday. But aside from the engine house and the office building, that is all that you say you found there?

A. To the best of my knowledge, yes, sir.

28283 Q. And you did not undertake to give a value to anything else that was there, if there was anything else?

A. To the best of my knowledge I assessed the buildings at the figure I quoted yesterday, and I presume those are the buildings.

Q. Do you recall anything, for example, about a new boiler house being there?

A. No, I do not recall it.

Q. Turn to Lot 6 of Block 978, you put a value on four of the buildings on that property?

A. Yes, sir.

Q. Was one of those a generator house?

28284 A. That I cannot say.

Q. Was one of those a purifier house?

A. I am not positive as to what they were used for.

Q. Was one of those a scrubber house?

A. I am unable to say.

Q. Was one of those a condenser building?

A. I am unable to say exactly.

Q. Was one of those a valve house?

Mr. O'Brien: I do not think we ought to take up the time. He has indicated.

The Master: The witness has said he is not able to say what they were.

Q. Is it true that you do not know what were the buildings on that lot that you valued?

A. What they were used for?

Q. Yes, or what kind of buildings they were?

A. Yes, I know what kind of buildings they were.

Q. Well, what kind of buildings were they, will you describe them?

A. To the best of my knowledge, one was 184 by 496.

Q. What were they built of?

A. What were they built upon?

Q. Built of? 28286

A. I think they were brick buildings.

Q. All of them?

A. To the best of my knowledge.

Q. What kind of roofs?

A. I am unable to state exactly what the material in the roof consisted of.

Q. Can you state at all what the material in any of the roofs consist of?

Mr. O'Brien: Did you say consist or consisted?

Mr. Ransom: Consist or consisted at that time?

A. No, sir, I am unable to state that. 28287

Q. Did they all have roofs?

A. To the best of my knowledge the ones that I saw did.

Q. Did you place any value on any that did not?

A. Not to my knowledge.

Q. On what unit of value or factor or basis did you determine or undertake to assign a value to these buildings in this gas plant?

A. At what factor?

Q. What was the factor, if you used a factor?

A. About a dollar and a half a foot.

Q. A dollar and a half a square foot?

A. Yes.

Q. That is the cost to build?

A. What they were worth at that present time.

Q. Did you have any idea as to what it would cost to build them at the present time?

A. No, sir, only from ordinary circumstances as to what a general building would be worth put up at this time.

Q. These were buildings which were part of the gas plant?

28289 A. Yes, sir.

Q. Does this figure which you have given represent your judgment as to what it would cost or would have cost at that time to build them?

A. What it was worth today.

Q. You mean what it would sell for?

A. Yes.

Q. What it would sell for for what purpose, for what kind of a use?

A. For a purpose that would be suitable in that neighborhood.

Q. You mean what they would sell for to be used as a gas plant?

28290 A. Why not exactly.

Q. Well, then, what?

A. Well, what the buildings would be worth if they were sold.

Q. Sold to be used or sold to be taken down?

A. For the purpose of any—

Q. (Interrupting.) For the purpose of any gas plant?

A. For any company that came along and purchased them, yes.

The Master: A gas company?

The Witness: Well, it might be altered into a garage or something of that kind.

The Master: In other words, any use to which it could be put?

The Witness: Yes.

The Master: Warehouse, storage house or anything else?

The Witness: Yes.

Q. This figure represents simply your judgment as to what they could be sold for?

A. As to what they were worth.

Q. And is figured purely on the square foot of floor space?

A. Yes. 28292

Q. And does not take into account, the kind of roof?

Mr. O'Brien: Oh, get off the roof, let's get down on *terra firma*. We have had that sixteen times, doesn't take in the roof.

A. It takes into consideration the roof, yes, sir.

Q. Now, with respect to these values which you have given to the building, and you say you are valuing machinery and apparatus separately.

A. On this same lot?

Q. Yes. All I want to get at is, how you undertook, with respect to buildings of the sort used in a gas plant, to distinguish between the buildings as 28293
foundations, and the machinery and apparatus in it?

A. I took the buildings themselves apart from the machinery.

Q. Did you consider the generators and the scrubbers and the like are built right into the building and its foundations?

A. We gave them a value also.

Q. The foundations of the machinery and the foundation of the building are one and the same?

A. The buildings, I figured they were the buildings as I found them in construction.

Q. Can you indicate in any way in which, with respect to buildings of this sort, you did divide and differentiate?

A. Not in any particular way, no, sir.

Q. Is it true with respect to all of the parcels concerning which you testified yesterday as to buildings and the like that the improvements which you described were all the improvements which you observed, and to which you gave a value?

A. Irrespective of the gas holders and—

Q. Well, did you on each of these parcels describe
28295 all of the improvements which you found, or were there other improvements which you did not describe?

A. To the best of my ability.

Q. You did describe them all?

A. Yes, sir.

Q. And if there were other buildings, other structures on those properties other than what you described, you did not give any value to them?

A. There may have been some small buildings on there which I did not give any dimensions of, but they were assessed also.

Q. Well, how about the large buildings?

A. The large buildings I have described.

28296 The Master: What about the large ones?

The Witness: The large ones I think I described.

By the Master:

Q. Do I understand your testimony to be that, whether you have particularly enumerated all of the buildings or not, you did value them all?

A. Yes.

Q. And in the figures you give of buildings, as distinguished from gas structures, machinery and equipment, you valued all of the buildings on the lot?

A. Yes.

Q. If you have not described them all it would not affect your statement that you valued them all?

A. No.

Q. Is that your testimony?

A. Yes, sir; it is.

By Mr. Ransom:

Q. Referring to Block 1092, Lot 1, what was the value which you gave for the land in 1913?

Q. $475,000.

Q. You say that was the value which was in force throughout that year? Is that the only value?

A. You asked me about 1913, Lot 1. 28298

Q. Yes, 1913, Block 1092, Lot 1?

A. $475,000.

Q. How many buildings did you undertake to give a value to on that plot?

A. To the best of my knowledge there are about six on that.

Q. Are those all the buildings on that property to which you undertook to give a value?

A. Yes, sir.

Q. Do you recognize this diagram of the property? I show you the condemnation map of this property, showing the buildings. Can you indicate which of the thirteen buildings on that plot, aside from holders, 28299 are included in these five or six on which you undertook to give a value (handing witness diagram)?

A. No, I could not, sir.

Q. Could you in any way tell which of the twelve or thirteen buildings which were shown to be on that property by the damage map at that time, you did give a value to?

A. Why, no, I could not very—no, I could not in detail.

Q. Block 1107, Lot 23?

A. For what year, Mr. Ransom?

Q. 1911 to 1913. You stated yesterday that there were no improvements upon that property during any of those years?

A. Yes, sir; it was assessed as unimproved.

Q. If there were any improvements on it you did not undertake to give any value to them?

A. No, sir.

Q. Any coal handling machinery you gave no value to?

A. No, sir.

28301 Q. Are you familiar in the course of your duties with what is known as rapid unloaders of coal?

A. No, sir.

Q. Have you ever seen such things?

A. I may have seen them.

Q. Do you recall whether there were any rapid unloaders in connection with the coal handling apparatus on this property at that time?

A. Block 1107?

Q. Block 1107, Lot 23, 1911 to 1913, both inclusive.

A. Why, to the best of my knowledge there was a sort of runway that went across to the gas company.

28302 Q. I show you this damage map again. The engine house in the southwest corner of the property, did you give any value to that?

A. On Lot 23?

Q. Yes.

A. No, sir.

Q. The rapid unloader and the coal handling machinery a little south of the middle of Lot 23?

Mr. Chambers: I object to that. He has not said there was anything like that on there at all.

A. No improvements at all there.

Q. Did you give any value at all to any rapid unloader or tramway or coal handling apparatus at that point?

A. No, sir.

Q. Or to a pump house and receiving station of oil in the northwest corner of the property?

A. No, sir.

Q. Marked C on the damage map?

A. On Lot 23?

Q. Yes.

A. No, sir.

Q. If there were any improvements then on that property, at that time, during any of those years, you gave no value to it? 28304

A. No, sir.

Mr. Chambers: He said that once before.

Mr. Ransom: I think that is all.

The Master: I want to ask Mr. Quinn a few questions.

Mr. Ransom: I have not gone over all these parcels because I do not desire to take the time. I think I have shown by these parcels the general method followed, and will have to stand on that.

By the Master:

Q. Mr. Quinn, do you not think that the income producing power of a piece of property is some indication of its value? 28305

A. Absolutely.

Q. Then, why did you entirely ignore the income producing value of that office building at 15th Street?

A. Because I thought that it could produce a return on that, as you say, figuring on the square foot area, of income.

Q. You gave a total value to that property of $2,300,000, as I understood you?

A. Including the land.

Q. And you figure the land at $410,000?

A. Yes.

Q. That left you $1,900,000 for the building?

A. Yes, sir.

Q. You say you have given full value for the land?

A. Yes, sir.

Q. I understood you to say that the office space up there is worth $3 a square foot?

A. I figured it at that.

Q. You say there are 437,000 square feet in the building?

28307 A. Yes, sir.

Q. How much of that goes off for halls?

A. I cannot say that.

Q. How much would you say? Would 37,000 square feet be fair, or more than that?

A. I cannot say that.

Q. Let us take a good deal off. Let us assume we take off 137,000 square feet from the 437,000; I should imagine that would be pretty liberal, would it not?

A. Yes, sir, it would be.

Q. More than liberal, would it not?

A. Yes.

28308 Q. That leaves still 300,000 square feet of rental space; is that right?

A. Yes, according to your figure.

Q. And that 300,000 square feet at $3 per square foot would bring in $900,000 a year gross; is that right?

A. Yes, sir.

Q. At what do you capitalize the gross income in reaching the value of the property in that neighborhood?

A. I know, but you got to figure this way; you say $3 a square foot, and I think you are high on that, for the simple reason that I think she would average—

Q. You put it at that; I did not put it that way.

A. No, but you said $3 a square foot is the running value. I say it runs from a dollar, maybe, or $1.25, up to $3 a square foot, or $1.50.

Q. What are ordinary lofts renting for around there?

A. Yes, but you are talking—

Mr. O'Brien: Your Honor, are you talking about the present time?

The Witness: That is what I understand.

The Master: I am talking to the witness.

Mr. O'Brien: I am asking you a question, because I am going to object to your questions on the record. I object to your taking over the witness and examining him. 28310

The Master: Note your objection.

Mr. O'Brien: It should be made plain whether you are talking about the present time or talking about 1913. Mr. Ransom questioned him about 1913 and 1914.

Mr. Ransom: 1919 and 1920.

The Master: I am talking about his 1920 assessment, which he made as of October 1st, 1919. That is what I am talking about.

Mr. O'Brien: I think that ought to be made clear. 28311

The Master: It is clear. You so understood me, didn't you?

Mr. O'Brien: I take an exception to your ruling, to your cross-examination, and suggest that if it is limited unless the whole thing is gone into it results in an embarrassment to the defendants.

Q. Mr. Quinn, what is ordinary loft space, ordinary light manufacturing and show room space, renting for in that section?

A. Probably a dollar or a dollar and a half.

Q. Where can you get any space of that kind for $1.50?

A. Square foot loft space.

Q. Where? In a fireproof building of this character?

A. This is an office building.

Q. It is a fireproof building, is it not?

A. Yes, sir.

Q. With elevators?

A. Absolutely.

Q. Take out all the partitions and you make a
28313 light—

A. You cannot—it would be about $2.25, $2 or $2.25.

Q. Yes. Office space in this section—do you know of any office space that you can get for $2 or $2.25 up at that section?

A. Why, I think that the Flatiron Building might have some, but it runs up.

Mr. O'Brien: I ask your Honor if you are confining yourself now to a short radius within 15th Street and Irving Place?

The Master: I say in that section.

Mr. O'Brien: Of course your Honor's knowl-
28314 edge of that section would indicate that you have got to go some little distance to get office buildings.

The Master: I do not know about that.

Mr. O'Brien: You have got a lot of nickelettes and automats and movie houses, Tammany Hall and Raines Law hotels, and boarding houses.

Mr. Ransom: A third of a block away is one of the biggest corset factories in the country—between a third and a half block away.

Mr. O'Brien: Which only accentuates what I say; it is not an office section.

28315

Mr. O'Brien: He likes the R/G corsets.

Q. Mr. Quinn, these gentlemen having had a talking fest, what would you say, after the questions I asked you, would be a fair estimate of what this company could rent that office space for if it turned it over into an ordinary office building, as of October 1st, 1919, in the light of demand or lack of demand for office space at that time? What would you say was the fair value they would get?

A. Considering the location of the property?

Q. Yes.

A. That is, for an office building?

28316

Q. Yes, and all the other elements. Was there a demand for office space, do you know?

A. There is a demand for office space downtown.

Q. There is a demand for office space uptown, or don't you know anything about it?

A. Well, in certain buildings there has been a demand for office space.

Q. Do you know whether there is any office space to be had above Fourteenth Street anywhere, or has there been within a year?

A. Not in these fireproof buildings.

Q. What would you say this company could rent that office space for on October 1, 1919, if they were to rent it out to the general public for office space or offices, located where it is, within a half block of two subway lines or four minutes from the City Hall and court house?

28317

Mr. O'Brien: Your Honor is testifying now.

The Master: I cannot stand for a lot of this nonsense getting on the record.

Mr. O'Brien: Judge Ransom had his day with him, you know, your Honor.

The Master: I am having my day now.

Mr. O'Brien: I submit it is cross-examination.

28318

The Master: Sure it is cross-examination; it is the Master's examination.

Mr. O'Brien: I submit it is improper. I submit that after the cross-examination of the defendants' witness, and then the re-direct, for the Master—

The Master: Don't you want me to be satisfied in my own mind as to what this building is really worth? Do you want me to be fooled and led astray?

Mr. O'Brien: Your Honor, I am going to expect you to take the proofs in the case with all
28319 their deficiencies.

The Master: And just shut my eyes and close my ears, and forget I have lived in this town for forty-seven years and know that section—is that what you want me to do—and that I know what real estate is worth and what it is based upon, and how men figure it, and to know that this witness agrees with me that rental value is some evidence of value—not absolute and not exact?

Mr. O'Brien: The record in this case shows the dimensions of this building, shows the way in which it is cut up, shows the fact that a great big part of the space is given over to halls and resting
28320 rooms and an auditorium and restaurant that are entirely unnecessary and extraneous to the gas business.

The Master: Wait a minute.

Mr. O'Brien: Well, you have asked—

The Master: I do not want any more; you are wasting too much time.

Mr. O'Brien: You have had your say and—

The Master: Stop it now.

Mr. O'Brien: I renew my objection to your further cross-examination of the witness, and I except to your ruling.

Q. Mr. Quinn, I have just asked you one simple question: What would you say would be the average price per square foot for office space in that building October 1, 1919—one dollar, two dollars, three dollars, or fifty cents?

A. About two dollars and a half or three dollars.

Q. So you are back to the $3 figure, are you not?

A. Yes.

Q. Take two dollars and a half and take 300,000 square feet at two dollars and a half, what will that give you as a gross rental? I think it is $750,000, is it not? 28322

A. Yes, sir.

Q. What factor did you use for capitalizing gross income, to indicate the possible value of that? What do you capitalize it at? I do not mean to say that your other way of figuring is not right, but I want to get the figures this way.

A. About four dollars a square foot.

Q. What?

A. About four dollars a square foot for office space.

Q. The office space?

A. Yes.

Q. You say the rental value is $4 a square foot?

Q. About $4 when I stop to think it over. 28323

Q. Take a basis of $4 a square foot, and take 300,000 square feet, you would have a gross income of $1,200,000 a year, wouldn't you?

A. Yes, sir.

Q. Now, that capitalized on a basis of ten per cent would make twelve million dollars?

A. Yes.

Q. If you chopped that in half and made it on the basis of five per cent you would have six million dollars?

A. Yes. Just a minute now, let us figure this out.

Q. To be frank with you, Mr. Quinn, I think you are a little high at $4.

A. Yes, I think $3—and I figure about 8 per cent.

Q. Now, let us take that. Let us take $2.50 a square foot. That would give you $750,000 a year gross income?

A. Yes.

Q. Now, at ten per cent that would be $7,500,000?

A. Yes.

Q. And taking it as low as five per cent you would have $3,750,000?

28325 A. Yes.

Q. And if you deducted $410,000 for the value of the land you would have the value of that building $3,300,000, wouldn't you?

A. Yes.

Q. How can I make that jibe with your figure of $1,900,000 for the building alone?

A. Of course, the rental proposition today is one of extraordinary circumstances, as you know.

Q. Well, so is the value of materials and labor, the cost of putting up a building is extraordinary today, too, isn't it?

A. Yes, it is.

28326 Q. When you value the building, or the property, as of October 1, 1919, you have got to take into consideration all of these elements, haven't you?

A. Why, yes, we have got to take into consideration all the elements.

Q. You could not simply assume that because it is an unusual situation that that building is not worth what they could rent it for. They could rent it for three or four or five years on that basis, couldn't they?

A. They could, if the leases had expired, if there were any there.

Q. Well, if the Consolidated Gas Company wanted to get out of three or four or five floors of that building they could easily rent it for a considerable term of years on the basis you have indicated, couldn't they?

A. I think they could.

Q. How can I disregard all these things and say that building is only worth $1,900,000?

A. From the fact that it has not been built in the last year—

Q. That does not interest you for taxing purposes?

A. Oh, no. 28328

Q. I know it doesn't interest the City when they come to tax my little place?

A. Nor mine, either.

Q. I met the president of the Board yesterday and told him about it and he said, "Will you sell it for what we have taxed it for?" I said, "It didn't cost any such figure to build, I didn't pay any such figure for it." He said, "I know that, but I know you wouldn't sell it for that." So it is not what it cost to build, is it, it is what you could sell it for?

A. Yes, sir. If the Gas Company puts in an application on that building in 1919, saying it is not worth that— 28329

By Mr. Chambers:

Q. Did they do that? Did they claim that the valuation was too high for 1919?

A. Shall I answer that?

The Master: Yes.

Mr. Ransom: The paper itself is the best evidence. I have offered that paper in evidence. It does not show what the witness has said.

The Master: The trouble with all these cases is that all sides, the complainant and the City,

blow hot or blow cold depending on the temperature they want for a particular purpose, that is the trouble with all these lawsuits.

Mr. Chambers: How about the gas company?

Mr. O'Brien: Let the witness answer the question.

The Master: So far as I am concerned I am going to take into consideration in this case any admissions against interest or claims against interest, but when you ask me to make a finding as to what a building is worth, I am going to disregard very much of this nonsense that goes in other proceedings, and I am going to decide this case on the facts as I find them.

28331

Q. Will you answer that question, whether the company applied for a reduction of that valuation?

Mr. Ransom: I object to the question as incompetent; the application is the best evidence.

The Master: I will ask the witness—I don't know whether there was an application. That objection, Mr. Quinn, if it were made, would be in writing?

The Witness: Just a minute until I see the book.

28332

Q. How about it?

A. There was an application for reduction of taxes filed, I presume by the Gas Company, in 1919.

The Master: You make that statement merely from some entry in your record?

A. From the record.

The Master: That is all you know about it?

The Witness: That is all I know about it.

Mr. O'Brien: That is pretty good knowledge, isn't it?

The Master: I don't think so.

28333

Mr. Ransom: I call your Honor's attention to the portion of the application which you read into the evidence.

The Master: Yes, I remember it.

Mr. Ransom: They asked for a reduction solely on the ground—

The Master: Does anybody else want to ask Mr. Quinn any questions?

Mr. Ransom: Yes.

Mr. Chambers: Solely on the ground of what?

Mr. Ransom: Solely by reason of the fact that this building or these improvements are necessarily used in a business in which, by the Legislature of the State of New York— 28334

The Master: This office building?

Mr. Ransom: Yes.

The Master: Nonsense.

Mr. Chambers: I want him to complete that.

The Master: I would like to be a tax commissioner and have an application like that come before me.

Mr. Ransom: The Tax Board granted it.

The Master: Yes, and I have so much less respect for them.

Mr. Chambers: I am afraid the Court hasn't any respect for anybody. 28335

Mr. Ransom: The company applied on the ground that the property of this company, the improvements, were being confiscated by being deprived of a fair return by reason of this rate here under review, and solely on that ground the tax authorities—

The Master: I understand that.

Mr. O'Brien: That would not be worth the paper it was written on as an objection.

The Master: Has any one any other questions?

Mr. Ransom: Yes.

Mr. Chambers: You applied for a reduction, nevertheless.

Mr. Ransom: On that ground, and got it.

Mr. Chambers: Well, that was a subterfuge. I will brand it what it is. You wanted a reduction, that is all.

Mr. O'Brien: Does your Honor believe that the rental ought to be about three dollars and a half or four dollars a square foot?

The Master: No, I said to the witness when he said four dollars that I thought it was too high.

28337 Mr. Chambers: The Master and the witness seem to agree on about two dollars and a half a square foot.

The Master: I think the witness is nearer right when he says two dollars and a half. In other words, putting it another way, I should rather take his testimony as being more nearly accurate at two dollars and a half than at four dollars a square foot, because the impression I get is that four dollars is too high.

Mr. Chambers: Then I take it that the Master is of the opinion that the company ought to rent all space that it doesn't use at two dollars and a

28338 half a square foot.

The Master: I am expressing no opinion on that.

Mr. O'Brien: The trouble is that money lending institutions do not seem to recognize this temporary advance in real estate, they are requiring mortgages to be reduced.

The Master: Have you any questions, Mr. Ransom:

By Mr. Ransom:

Q. With respect to Lot 6, Block 978 for example, these buildings, did you assess those on the basis of what it would cost to reproduce them?

28339

A. I took into consideration their present value as they are today.

Q. Is this figure which you reached as to these buildings what it would cost in your judgment to build them, the cost to reproduce them, or is it what they would now sell for?

A. What they would sell for in their present condition.

Q. It is not a question of what it would cost to build them?

A. Not alone.

Q. Is it at all?

28340

A. No, sir.

Q. With respect to all these properties of the company, you left that out of consideration, what it would cost to build them?

A. I took into consideration the present value.

Q. What they would sell for?

A. What they would sell for.

Q. Not what it would cost to build them?

A. No, sir.

Mr. Ransom: That is all.

By Mr. Chambers:

Q. Take that very same Lot 6, Block 978, counsel asked you if you assessed all the improvements on it. Now, I want you to tell what assessment you placed upon all the improvements.

28341

Mr. Ransom: Objected to. I asked him as to all the buildings.

The Master: Objection sustained.

Mr. Chambers: Exception. He opened the door.

The Master: I don't think so.

Mr. Chambers: I do, and I take an exception.

Q. Did you assess that lot and block with all the improvements on it at a certain figure?

A. Yes, sir.

Q. And there were no improvements on there that
28343 you know of that you did not cover?

A. No, sir.

Q. Which you considered of value?

A. Yes, sir.

Q. That included buildings, machinery, holders and all?

A. The total assessment, yes, sir.

Q. I ask you to give it?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, take Block 1157, Lot 1—as to that did you place a valuation upon all the improvements?

28344 A. Yes, sir, to the best of my knowledge.

Q. That you thought of value?

A. Yes, sir.

Q. Will you give the valuation of those?

Mr. Ransom: Objected to as incompetent, not re-direct examination, and really taking up time.

The Master: Objection sustained.

Mr. Chambers: The door was opened. Exception.

Q. There were no improvements there that you did not take into consideration that you knew of?

A. Not to my knowledge.

28345

Q. Now, take Lot 7, Block 1092, were there any buildings on that lot that you did not take into consideration when you placed the valuation upon it for the 1919 taxes?

Mr. Ransom: Objected to as not re-direct examination.

A. On what block?

Q. Block 1092, Lot 7.

A. I didn't assess that in 1919.

The Master: Mr. Chambers, your questions relate to all of these properties, do they not?

28346

Mr. Chambers: Yes.

The Master: That Mr. Ransom has cross-examined him about?

Mr. Chambers: Yes, sir.

The Master: Your question is as to all of them. Was there any property on there that he did not include in his appraisal?

Mr. Ransom: That he found, that he knew of.

The Master: Why can't you make your question comprehensive.

Mr. Chambers: No, each one of them is different.

Q. He called your attention to some buildings on there.

28347

A. On where?

Q. Block 1092, Lot 7. That is the property which you said was idle in 1915, condemned by the City in 1915.

A. Yes, sir.

Q. Now, he asked you what buildings were on that, and do you recall that there was a brick building 66 by 155, which I don't think you gave, did you find such a building for the 1914 assessment?

Mr. Ransom: What are you trying to do, contradict his testimony? I object to it as not re-

direct examination and an effort really to contradict his own witness.

A. Yes, sir.

Q. You found four large tanks, and a small tank?

A. Yes, sir.

Q. And then a meter office, is that right?

A. Yes, sir.

Q. And an engine room?

A. Yes, sir.

Q. And a brick building 66 by 155?

A. Yes, sir.

28349 Q. Now, were there any others, was there a purifier?

A. Not to my knowledge.

Q. Those are all the buildings that you recall?

A. Yes, sir.

Q. This was quite a long time ago?

A. Yes, sir.

Q. The only way you have of refreshing your recollection is from the records?

A. Yes, sir, and trying to refresh my memory by thinking of the district.

Q. You examined the property and knew what buildings were there at the time?

28350 A. Yes.

Q. That is true of all this property?

A. Yes.

Q. It is so long ago you can't remember all the details?

Mr. Ransom: I object to that, it is testimony by the Attorney General.

Q. You can't remember all the details now?

Mr. Ransom: I object to it, he is simply putting words into the witness's mouth.

Q. You can't remember what kind of roofs were on them in detail, can you?

A. I cannot.

Q. Have you any doubt but what at the time you knew and looked them over?

Mr. Ransom: I object to that.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I looked them over at the time.

Q. And knew how they were constructed and what kind of roofs they had?

Mr. Ransom: Objected to. It does not appear that he had knowledge.

28352

Q. Will you give the value of all those improvements that you found on this Lot 7, Block 1092, as for 1914?

Mr. Ransom: Objected to as incompetent and not re-direct examination.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Were there any other buildings on there which you recall to which you gave no value?

A. I cannot state.

Q. That is so long ago that you cannot recall?

A. I cannot recall.

28353

Q. The only way you have of refreshing your recollection is from the records?

A. Yes, sir.

Q. Now, the valuation which you placed upon the office building on 15th Street, in your judgment, was it the full value of that office building, what it would sell for at the present time?

A. Yes, sir.

Q. Taking into consideration what you did take into consideration?

A. Yes, sir.

Q. You know that conditions are abnormal now, don't you?

28354 Robert Miller, Direct.

Mr. Ransom: Objected to. I object to Mr. Chambers continuing to testify unless I may have a chance to cross-examine.

A. Yes, sir.

Q. Conditions are abnormal in the building conditions here in the city?

Mr. Ransom: Objected to, not re-direct.

The Master: Overruled.

A. Yes, sir.

Q. Houses and property scarce at the present time?

The Master: What is the use talking about
28355 that at the present time. He is assessing as of October 1, 1919, on your theory of an abnormal time, as to what it will sell for in that abnormal time. What is the use wasting any more time on it?

Mr. Chambers: That is all.

(Witness excused.)

ROBERT MILLER, called as a witness, being duly sworn, testifies as follows:

28356 DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Miller, what is your business?

A. Deputy Tax Commissioner.

Q. How long have you been such?

A. Twenty-four years, on the 22nd of January.

Q. And during that time what have you been engaged in doing?

A. Assessing property.

Q. All over the City?

A. All over the City, yes, sir.

Q. Have you been in every single tax district?

A. No. I have been from Staten Island to the Bronx.

Q. Have you covered all the districts in Manhattan?

A. No.

Q. You have covered a good many of them?

A. No, I have only covered two of them.

Q. Two in Manhattan?

A. I had the largest district in Manhattan for twelve years, so they did not change me.

Q. Before you entered the Tax Department, what business were you in, the real estate business?

A. I was dickering in real estate, and I was in the 28358
furniture and carpet business before that.

Q. Did you buy and sell real estate?

A. Yes.

Q. Before you were in the Tax Department?

A. Yes, sir.

Q. Have you, since you have been in the Tax Department, kept in touch as best you could with sales of property?

A. I certainly have.

Q. In the districts where you were assessing property?

A. Yes, sir.

Q. You have made a study, have you, and read the 28359
news on sales and rentals?

A. Yes, in the district to which I was assigned.

Q. And did you keep track of buildings, new buildings, and the cost of construction?

A. Yes, sir.

Q. Of new buildings?

A. Yes, sir.

Q. During all this time?

A. All this time.

Q. In other words you have made a study all this while of values of land and buildings in the City?

28360 Robert Miller, Direct.

A. Yes.

Q. All kinds of buildings?

A. All kinds.

Q. For office purposes and dwellings?

A. For office purposes.

Q. Factories?

A. Yes.

Q. Gas—have you had much to do with gas properties?

A. No, I have not had much to do with gas properties. I had this one on which I am to testify, I believe,
28361 and on which there is only a tank.

Q. Now, that one that you are to testify about is Lot 6, Block 1467, isn't it?

A. Yes, sir.

Q. What year did you first assess that?

A. 1907. That is as far as you are going back.

Q. You have testified, have you, in legal proceedings in regard to the value of real estate, certiorari proceedings?

A. No, I have not. I have been at the trials, but have not testified.

Q. Have you ever testified in condemnation proceedings or any proceedings?

28362 A. No, not condemnations.

Q. Testing the value of real property?

A. No, sir.

Q. Have you ever appraised real properties for others?

A. Yes, sir.

Q. A good deal or a little?

A. Well, a little.

Q. Covering what period of years?

A. Since I have been in the department.

Q. Take this Lot 6, Block 1457, you began to assess that in 1907, you say, for the 1908 tax?

A. I did, so far as your going back. I assessed it away back in 1896.

Q. Well, we don't go back to 1896. What tax was that for?

A. For the 1907 tax I assessed it.

Q. That would be the value as of the second Monday of January, 1907?

A. Yes, sir.

Q. Do you know the dimensions of the lot?

A. 266 feet 7 by 200 feet 10, irregular.

Q. Give me the dimensions, can you, on East 62nd Street? 28364

A. 266 feet 7 inches.

Q. And what on 63rd Street?

A. 216 feet 6 inches.

Q. Now, what valuation, Mr. Miller, did you place as of the second Monday of January, 1907, on that lot?

Mr. Goetz: We object, if your Honor please, on the ground that the witness has not been qualified to give any testimony in regard to the value of real estate except as an admission against interest, and he is not qualified to do that either.

The Master: I will overrule the objection in so far as it refers to land and buildings. 28365

Mr. Goetz: Exception.

A. $125,000 for the land.

The Master: Unimproved?

The Witness: Unimproved. $225,000—

Mr. Goetz: We object to that, if your Honor please.

The Master: Objection sustained. Strike it out.

Q. What improvements did you find on that?

A. One gasometer, tank.

The Master: Gas holder?

The Witness: Gas holder.

Q. Did you value that?

A. I valued that.

Q. How did you value it? Tell us all the details?

A. I followed a rule that was used by the department at that time.

Q. What?

A. According to a certain rule established by the department at that time.

The Master: A certain fixed number of cents per cubic foot capacity?

28367

The Witness: Cubic foot capacity.

Q. And you applied that rule to the capacity of the tank?

A. I did.

Q. And was that all? Was that the only improvement you found on it?

A. That was the only improvement.

Q. No other structures on there?

A. No other structures that I remember.

Q. It is a long time ago, but can you say whether you examined the premises at that time?

A. I examined the premises.

28368 Q. As you did all premises that you assessed?

A. Yes.

Q. And if there was anything else on there, you would have found it and made a note of it?

A. I think so.

Q. Anything of value?

A. Yes.

Q. Now, I ask you to give the valuation that you placed upon the holder for tax purposes?

Mr. Goetz: Objected to on the ground he is not qualified.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, Mr. Miller, I want to know, if you will look at this map, if you are able to—I want to have you apply your unit there and see if you can give me, applying your units, the value of what I call Parcel 1 here; the whole lot is this with this Parcel 2. Now, what units did you apply? This is unimproved?

A. That was valued at about $6,000 a lot.

Q. And how many lots did you figure in East 62nd Street?

A. Eight and two-third lots.

Q. Take this little Parcel 2, 50 feet 1 inch, that 28370
would be about two lots?

A. Two lots.

Q. And that would be?

A. $12,000.

Mr. Goetz: If your Honor please, I object in the first place to the question as leading, and in the next place I object to the witness giving any testimony with regard to portions of the lot based upon the application of some units that he applied in valuing the entire lot.

The Master: Objection overruled.

Mr. Goetz: In valuing real estate it is well known that one unit might apply to a small piece 28371
of property and a different unit would apply to an entirely different piece of property, and this is all cross-examination bringing out from the witness the basis of his opinion.

The Master: Objection overruled.

Mr. Goetz: Exception.

Q. So that, Mr. Miller, if I take off from this whole plot a little parcel on the westerly side 50 feet 1 inch fronting on East 52nd Street, with a depth of 100 feet 5 inches, you would say that the proportion that that bears to the larger parcel would be approximately $6,000?

28372 Robert Miller, Direct.

Mr. Goetz: Same objection.

The Master: Overruled.

A. No, I said $12,000.

Q. $12,000?

A. With a little more for plottage.

Q. How much would you say for plottage?

A. About $12,600.

Q. For that piece that I have just described?

A. Yes.

Q. And then would you say, deducting that from the figure you gave for the whole plot of $125,000,
28373 if our figures are correct, that leaves $112,400 for that?

A. Yes.

Q. And would you say that was the full value of that remaining portion?

A. Yes, for that remaining portion.

Q. Now, in your judgment, was that the sum, these sums which you have given of the valuation of the whole plot and the valuation of the small parcel, and the valuation of the large parcel with the small parcel taken off, would you say those values in your judgment are the sums for which under ordinary circumstances these parcels of land would sell if wholly
28374 unimproved as of the second Monday of January, 1907?

Mr. Goetz: That is objected to on the same grounds.

The Master: Wholly unimproved. I will allow it.

Mr. Goetz: That is objected to on the ground that there is no evidence in this case with regard to a portion of this property and, furthermore, this witness never assessed, never valued as a tax commissioner, the portion of this property.

The Master: Objection overruled.

Mr. Goetz: Exception.

A. Yes.

Q. Now, did you assess it for 1908?

A. Yes, sir.

Q. What valuation did you place upon it?

A. Same value.

Q. Then would you make the same answers for its valuation as of the second Monday of January, 1908, as you did for 1907, as to all the different parcels?

A. I would. 28376

Q. And that valuation, the figures you gave, would that in your judgment be the sum for which that land would sell under ordinary circumstances?

Mr. Goetz: Objected to on the same grounds as previously stated.

The Master: Same ruling.

Mr. Goetz: Exception.

A. Yes, sir.

Q. If wholly unimproved?

A. Yes, sir.

Q. Now, for 1909, did you?

A. Same value.

Q. Same value? 28377

A. Yes, sir.

Q. And so far as its value is concerned for 1909, you would make the same answers you made for 1907 and 1908 as to the two different parcels that I described?

Mr. Goetz: Same objection.

A. Yes, sir.

Q. And would you say that that valuation would be the sum for which the property would sell if wholly unimproved as of the second Monday of January, 1909?

28378 Robert Miller, Direct.

Mr. Goetz: Same objection.

The Master: Overruled.

A. Yes, sir.

Q. In 1910 did you assess it?

A. Same.

Q. And for 1910 you make the same answers you made for the other years?

A. Same answers as before.

Mr. Goetz: Same objection.

The Master: Same ruling.

Q. And in your judgment, that would be the same
28379 value, and would sell for that sum or those sums, if wholly unimproved?

A. Yes.

Q. And in 1911?

A. No.

Q. That is as far as you go?

A. That is as far as I go.

Q. Now, in 1908, did you value this parcel with the improvements thereon?

A. Yes, sir.

The Master: Same improvements?

The Witness: Same improvements.

The Master: 1909?

28380 The Witness: 1909.

The Master: 1910?

The Witness: 1910.

The Master: How far did you go, 1911?

The Witness: No, 1910.

The Master: All the same improvements?

The Witness: Yes.

Q. I ask you to give the value of that property for each of those years, 1908, 1909 and 1910, with the improvements thereon?

Mr. Goetz: That is objected to.

The Master: You valued this gasometer or gas holder in the same way during the subsequent years?

The Witness: Yes, sir.

The Master: Objection sustained.

Q. Could you say where on the lot the gasometer was? Was it—I want to know whether it was on this little piece?

A. No, it could not be because it was 187 feet in diameter, it had to be on the larger parcel.

Q. In other words, it was not on the little parcel 50 feet 1 inch by 100 feet 5 inches which I described to you? 28382

A. No.

The Master: No part of it?

The Witness: No part of it.

Q. Now, in 1908 were there any other improvements on this parcel?

A. No, sir; not that I know of.

Q. Except the gasometer?

A. No.

Q. How about 1909, any other improvements?

A. The same.

Q. 1910?

A. The same. 28383

CROSS-EXAMINATION BY MR. GOETZ:

Q. Mr. Miller, you were testifying from a paper. What is that paper?

A. That was taken from the records yesterday in the Tax Office.

Q. Taken by you?

A. By me, because I did not know whether the books would get here, and thought we might testify yesterday.

Q. Didn't you know the value of that property in 1907 to 1911, without referring to the tax record?

A. If you have assessed seven and a half billion dollars' worth in that time, you would not remember one gasometer that you had assessed fourteen years ago.

Q. If you had been called upon the stand here today without that paper and without that tax record before you to give you the figures which you assessed in 1907 to 1911, would you be able to express an opinion as to the value of that property for those years?

A. Not without the official records, from which
28385 this was taken.

Q. In giving the value of a portion of the plot, did you take the same percentage of the total value as the portion which you valued bore to the total plot?

A. I did.

Q. And did not vary your valuation by any other factors?

A. No other factors.

JAMES O'CONNELL, called as a witness in behalf
28386 of the defendant Newton, being duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. O'Connell, what is your business?

A. I am a deputy tax commissioner of the City of New York?

Q. How long have you been deputy tax commissioner?

A. Since June, 1898.

Q. Since June, 1898?

A. Yes, sir.

Q. And before that what was your business?
A. I was in the real estate and insurance business.
Q. Buying and selling real estate?
A. Yes, sir.
Q. Where, here in the City?
A. In Manhattan; yes, sir.
Q. In Manhattan?
A. Principally.
Q. How long had you been in the real estate business before you were a deputy tax commissioner?
A. About eight years.
Q. And during that time you bought and sold? 28388
A. Yes, sir.
Q. And rented real property in the City?
A. Yes, sir.
Q. And were you familiar with the value of lands?
A. Yes, sir.
Q. And the value of buildings?
A. Yes, sir.
Q. In the City?
A. Yes, sir.
Q. And what buildings would rent for?
A. Yes, sir.
Q. Various kinds of buildings?
A. Yes, sir. 28389
Q. And various kinds of land with improvements on it?
A. Yes, sir.
Q. And then you entered the Tax Department?
A. Yes, sir.
Q. Did you pass a civil service examination?
A. Yes, sir.
Q. A competitive examination?
A. Yes, sir.
Q. And you are in the competitive schedule of the civil service?
A. Yes, sir.

Q. And you were, then, appointed?

A. Yes, sir.

Q. Took an oath, I take it?

A. Yes, sir.

Q. And have been acting continuously ever since?

A. Yes, sir.

Q. And your duties as deputy tax commissioner require you, do they, to appraise or fix a value for tax purposes on lands in the City?

A. Yes, sir.

Q. And have you been doing that during all these
28391 years since 1898?

A. Yes, sir.

Q. Have you fixed a value upon various pieces of real estate land and real estate with improvements, during that time, in the City of New York?

A. Yes, sir.

Q. In the Borough of Manhattan?

A. Yes, sir; and also in other boroughs.

Q. What is that?

A. In other boroughs during that time as well.

Q. Where real estate values were in question?

A. No, sir.

Q. Have you kept abreast of the values of real
28392 estate during all this time?

A. Yes.

Q. Watched the sales, have you?

A. Yes, sir.

Q. Consulted the sales as recorded from time to time?

A. Yes, sir.

Q. And leases, term leases?

A. Yes, sir.

Q. Kept right up to date on those, have you?

A. Yes, sir.

Q. And watched the mortgage loans on property?

A. Yes, sir.

Q. In the City?

A. Yes, sir.

Q. You have not any interest in this litigation, have you, of any kind?

A. No, sir

Q. Take Block 1157, Lot 1, for the year 1912, October 1, 1912.

The Master: Do you mean for the tax year 1912? That would be October 1, 1911.

Q. What was the first year you assessed that?

A. I assessed for 1912, as of October 1, 1911.

Q. It was for the 1912 taxes? 28394

A. Yes, sir.

Q. What was the size of the lot there?

A. 200 feet 10 inches on West End Avenue, 800 feet on 66th Street, 200 feet 10 inches on Amsterdam Avenue, and 800 feet on 65th Street.

The Master: Do you mean the entire block?

The Witness: Yes, sir.

Q. That is the entire block?

A. Yes, sir.

Q. What valuation did you place upon that as of October 1, 1911, for the 1912 taxes?

The Master: Unimproved?

Mr. Chambers: Unimproved. 28395

A. $600,000.

Mr. Vilas: Just a moment, if you please. The same general objection that has been specified heretofore in the testimony of the deputy tax commissioners on behalf of the defendants.

The Master: Objection overruled.

Mr. Vilas: Exception.

Q. $600,000?

A. Yes, sir.

Q. Wholly unimproved?

A. Yes, sir.

Q. I want to cut off this 300 feet here on Amsterdam Avenue.

A. I anticipated that because of the fact that you had it done yesterday.

Q. Mr. O'Connell, taking off from that lot, which occupies the whole plot, 300 feet from Amsterdam Avenue, both on 66th Street and 65th Street, can you give me the relative proportion of the remaining wholly unimproved?

Mr. Vilas: I object to that on the ground that it appears the witness has not assessed the frag-
28397 ment of this property described for taxation.

The Master: Objection overruled.

Mr. Vilas: Exception.

Mr. Chambers: It is a large fragment.

Mr. Vilas: It is.

A. And the West End Avenue front of it, 500 feet, would figure $400,000.

Q. Wholly unimproved?

A. Wholly unimproved. I have erred, Mr. Chambers. That is for 1914.

The Master: What was your total for 1914?

The Witness: $700,000.

Mr. Vilas: I object to that.

28398 The Master: Yes, that is taken subject to the objection.

Mr. Vilas: You asked for the total. I do not know what he gave you for that.

The Master: No, the land unimproved.

Mr. Vilas: Is that unimproved?

The Master: Yes.

Q. You said that figure you gave me was for 1914?

A. Yes, that is what I figured.

Q. What would that be for 1911?

A. On the same proportion it would be 7/12—at least 4/7 of $600,000.

28399

Q. For 1911?

A. For 1912.

Q. 4/7 of $600,000.

The Master. Yes. How about 1913?

The Witness: 4/7 of $675,000.

By the Master:

Q. In other words, you valued the land unimproved of 1912 at $600,000; 1913, $675,000; 1914, $700,000?

A. Yes, sir.

Mr. Chambers: Wholly unimproved.

28400

Q. And you say that as to each of those years, the value of the West End Avenue front 500 feet would be 4/7 of the total?

A. Assuming that proportion will bear out for the other years.

By Mr. Chambers:

Q. These figures which you have given then for the whole plot, wholly unimproved, and the West End Avenue 500 feet, are those sums in your judgment the sums for which this property would sell under ordinary circumstances, wholly unimproved?

A. Yes, sir.

The Master: At those dates.

Q. At those dates?

28401

A. Yes, sir.

Q. Were there any improvements on this property in 1911?

A. Yes, sir.

Q. What improvements, Mr. O'Connell?

A. There were gas holders and boilers.

Q. How many gas holders?

A. There were eight of them.

Q. How many boilers?

A. There were four boilers.

Q. And anything else on it?

A. There were three small buildings, one and two stories.

Q. Have you any idea where the buildings were located with reference to the 300 feet or 500 feet?

A. The buildings were located about in the center.

The Master: The witness indicates on the 500 feet.

Q. Where were the holders?

A. The two large holders here (indicating).

Mr. Vilas: I object to the witness testifying
28403 with reference to the map, which is off the record.

The Master: That is all right.

Q. The two large holders were on the 500-foot section?

A. On the 500 feet.

Q. What was on the 300 feet?

A. The six holders, I think, were within that space.

The Master: Within the 300 foot space?

The Witness: Within the 300 foot space.

Q. That is a long time ago, and you have to refresh your recollection?

A. That is my recollection of it, that those hold-
28404 ers were there, but how far back they extended I cannot recall.

The Master: Well, the general picture I get was that the entire block was pretty well covered.

The Witness: Pretty well covered at that time.

Q. Did you value the holders separate from the buildings?

A. Yes, sir.

Q. And did you place a valuation upon the buildings?

A. Yes, sir.

Q. Your own independent judgment?

A. Yes, sir.

28405

Q. What value did you place upon the buildings, excluding the holders?

Mr. Vilas: Objected to.

The Master: Excluding boilers and excluding machinery and equipment.

A. $10,500.

Mr. Vilas: Wait a minute. That is objected to.

The Master: Overruled.

Mr. Vilas: Exception.

The Witness: $10,500.

Q. That is just for the buildings? 28406

The Master: For what year?

The Witness: For the year 1912.

Q. October 1st, 1911, for the 1912 assessment?

A. Yes, sir.

Q. That is just buildings, without the holders or anything else?

A. No, sir

Q. Was there machinery in the buildings?

A. There was machinery in the buildings.

Q. Did you value that separately, too?

A. Yes, sir.

Q. And did you value the holders separately?

A. Yes, sir. 28407

Q. How did you value the machinery in the building?

A. Why I studied up everything I could on the subject of machinery of different kinds, sought information wherever I could get it, discussed that kind of an improvement with anybody I thought knew something about it; and in addition to that we were furnished information from the department that guided me, and after resolving the whole into a whole, I put a value of what I thought it was worth.

Q. You did not use the department's information entirely?

Mr. Vilas: I object to the question as leading.

A. Well, not entirely.

Mr. Vilas: Wait when I object.

The Master: I will allow it.

Mr. Vilas: Exception.

Q. Will you state what value you placed upon the machinery?

Mr Vilas: That is objected to.

The Master: Objection sustained.

Mr. Chambers: Exception. I think he is com-

28409 petent.

Q. Are you able to state what was the value of the machinery in those buildings as of October 1st, 1911?

Mr. Vilas: That is objected to on the same ground.

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: Do you repeat the same questions as to 1912 and 1913?

The Witness: 1912, 1913 and 1914.

Mr. Chambers: Yes.

Mr. Vilas: Same objection.

The Master: Well, as of October 1st, 1912,

28410 and as of October 1st, 1913.

The Witness: Yes

The Master: Same ruling.

Q. The holders, how did you value those?

A. The same way.

By the Master:

Q. Did you not value those on the basis of the value given you by the department, so much per cubic foot of content?

A. I had that information handed to me. I was not bound by it.

Q. But you did follow that?

A. I did to some extent, because I recognized that they had made some exhaustive study on that subject.

By Mr. Chambers:

Q. Did you make some study of your own, some inquiries and studies of your own regarding the holders?

A. Oh, yes; not only regarding those, but on all improvements of every kind, wherever I can get information I seek it.

Q. What value did you place upon the holders as of October 1st, 1911?

Mr. Vilas: Objected to on the grounds previously stated. 28412

The Master: Same ruling.

Mr. Vilas: Exception.

Mr. Chambers: You see, he pursued a different policy.

The Master: Yes, but I do not think he is qualified.

Q. As of October 1st, 1912, what value did you place upon the holders?

Mr. Vilas: Same objection.

The Master: Same ruling.

Q. As of October 1st, 1913?

Mr. Vilas: Same objection. 28413

The Master: Same ruling.

Q. 1914?

The Master: He did not go to 1914.

Mr. Vilas: No.

Q. These figures you have given for this lot and block are the same for which in your opinion an judgment it would sell under ordinary circumstances at that time?

A. Yes, sir.

Q. If wholly unimproved?

A. Yes, sir.

Q. Block 1177, Lot 21. You assessed that as of October 1, 1911?

A. Yes, sir.

Q. For the 1912 taxes. What were the dimensions of your plot, Mr. O'Connell?

A. It was 343 feet 9 inches on 66th Street, 200 feet 10 inches on West End Avenue, 299 feet 9 inches on 65th Street and 205.59 feet fronting on the New York Central Railroad.

Q. That line on the New York Central Railroad side is on a slant?

28415 A. It runs northwest.

Q. Did you value this Lot 21, Block 1177, as of October 1, 1911?

A. Yes.

Q. What value did you place upon it wholly unimproved?

A. $190,000.

Q. Is that the sum for which in your judgment that parcel would sell under ordinary circumstances?

A. Yes, sir.

Q. If wholly unimproved?

A. Yes, sir.

Q. As of that date?

28416 A. Yes, sir.

Q. What was that figure?

A. $190,000.

Q. You assessed it again for the succeeding year 1912, October 1, 1912?

A. Yes, sir.

Q. For the 1913 assessment. What value did you place upon it then?

A. $200,000 on the land.

Q. Is that the sum for which under ordinary circumstances in your judgment this parcel would sell if wholly unimproved?

A. Yes, sir.

Q. October 1, 1913. I asked you about 1912?

A. Yes, sir.

Q. October 1, 1913, what valuation?

A. $225,000 on the land.

Q. Is that the sum for which that lot would sell under ordinary circumstances as of that time, if wholly unimproved?

A. Yes, sir.

Q. Were there any improvements on this property?

A. Yes, sir.

Q. As of October 1, 1911?

A. Yes, sir. 28418

Q. What improvements, Mr. O'Connell, were on the lot as of that date?

A. There were two buildings there and other small sheds and smaller buildings.

Q. Are you able to say when you visited the property at the time you made the assessment in 1911 and looked it over—

A. (Interposing.) 1911, for the taxes of 1912, I had $15,000 on it for the improvements, all buildings.

Mr. Vilas: I object to that. My attention was diverted for a moment.

The Master: I assume from what the witness says— 28419

Mr. Chambers: He got a litle ahead of my question.

Mr. Vilas: Yes, and I move to strike it out.

The Master: He testified to a value he gave to the buildings, excluding machinery, equipment and the like.

By the Master:

Q. Is that so, Mr. O'Connell?

A. Yes, sir.

Q. And the estimate of value of those buildings you arrived at from your own experience and knowledge?

A. Yes, sir.

Q. Not based on any other information given you by somebody else?

A. No, sir.

The Master: I will take his testimony subject to your objection.

Mr. Vilas: Exception.

By Mr. Chambers:

28421 Q. At the time that you visited the property and looked at the buildings?

A. Yes, sir.

Q. Did you know at that time what kind of buildings they were?

A. Yes, sir.

Q. Their condition?

A Yes, sir.

Q. What kind of materials they were made of?

A. Yes, sir.

Q. The value you have given is for all the buildings that you found on the lot or on that land?

A. Yes, sir.

28422 Q. Was there machinery in the buildings?

A. I assessed no machinery in the buildings. I do not think—there may have been machinery there.

Q. But you did not take into consideration and you did not even assess anything more?

A. Nothing more than the buildings.

Q. The sum you have given is for all the improvements you have assessed on the property?

A. Yes, sir.

Q. The amount you have given for that property improved, is that the sum for which in your judgment the property would sell as of that date, with the improvements thereon?

A. Yes, sir.

Q. October 1, 1912, what did you assess the improvements at?

Mr. Vilas: Same objection.

The Master: Same ruling.

Mr. Vilas: Exception.

A. $15,000.

Q. And were the improvements the same as the year before?

A. Yes, sir.

Q. And the improvements were the same, you say. You visited the property? 28424

A. Yes, sir. I would say in conjunction with that the improvements were in progress that year. They were making or putting in an addition to one of the buildings at that time, but it was not assessed for the year 1913.

Q. You looked at it that year and visited it and examined it?

A. Yes, sir.

Q. And the sum you have just given for that property improved is the sum which it would sell for under ordinary circumstances in your judgment?

A. Yes, sir.

Q. The 1913 assessment, or valuation for the 1914 assessment? 28425

A. An addition had been made to the two-story building between my assessment of the former year and going out again, and I increased the improvements, entirely on the building, to $25,000—a total of $25,000.

Q. So that $25,000 covered all the improvements you found on the property as of that date?

A. Yes, sir.

Q. And you arrived at that by your own independent judgment?

A. Yes, sir.

28426 James O'Connell, Direct.

Q. And after visiting the property?

A. Yes, sir.

Q. And was that sum in your judgment the sum for which that property would sell as of that date with the improvements thereon?

A. Yes, sir; in my judgment.

Q. Block 1670, Lot 1—you assessed that, Mr. O'Connell, for the year 1906?

A. Yes, sir.

Q. What were your dimensions of the lot in 1906?

A. On Second Avenue 201 feet 10 inches; on
28427 East 99th Street, 650 feet; on First Avenue 201 feet 10 inches; on East 98th Street 650 feet.

Q. That occupied the entire block?

A. Yes, sir; a square block.

Q. You visited the property, did you, sometime around the second Monday of January?

A. Yes, sir; previous to that.

Q. And examined it?

A. Yes, sir.

Q. And then did you value it?

A. Yes, sir.

Q. What value did you place upon it wholly unimproved?

28428 A. $365,000.

Q. Was that in your judgment the sum for which that property would sell wholly unimproved as of that date?

A. Yes, sir.

The Master: I think we could save a few minutes if you ask a witness like Mr. O'Connell, as to the land unimproved right through, ask him

the one question whether at the various dates it was the same. Do you understand what I mean, Mr. Chambers? You have just had 1906. Now, take 1907, 1908 and 1909 and ask whether at those respective dates the figures were the same.

Q. You visited the property in 1907?

A. Yes, sir, the same valuation.

Q. Wholly unimproved?

A. Wholly unimproved.

Q. In 1908 you visited it again?

A. Yes, sir.

Q. What valuation did you place on it? 28430

A. $475,000.

Q. And in 1909 you visited it again?

A. Yes, sir.

Q. What valuation did you place on it?

A. $475,000.

Q. Wholly unimproved?

A. Yes, sir.

Q. And in 1910?

A. $475,000.

Q. That is wholly unimproved?

A. Yes, sir.

Q. That is the last that you assessed it during this period? 28431

A. Yes, sir.

Q. These sums which you have given, are those the sums which in your judgment the property would sell for at those times?

A. Yes, sir.

Q. Wholly unimproved?

A. Yes, sir.

The Master: Under ordinary circumstances?

The Witness: Yes, sir.

Q. Now, the improvements. What improvements did you find on it as of the second Monday in January, 1906?

A. There were a number of buildings there, some boilers, pumps and gas holders.

Q. Can you tell us how many gas holders?

A. Four.

Q. How many buildings?

A. Well, there were seven—maybe ten or a dozen buildings, seven of which I have the sizes of, and a number of small buildings.

Q. Did you go and see them at that time?

A. Yes, sir.

Q. And looked them over?

28433 A. Yes, sir.

Q. Did you know what materials they were made of?

A. Yes, sir.

Q. And how they were constructed?

A. Yes, sir.

Q. You knew their general layout and location?

A. Yes, sir.

Q. Did you value the buildings separately from the tanks and holders?

A. Yes, sir.

Q. And separate from machinery in them?

A. Yes, sir.

28434 Q. Was there machinery in some of them?

A. Some of them, yes.

Q. And in some of them there was no machinery?

A. I would not say positively. Yes, there were buildings, I am quite sure, without machinery.

Q. What value did you place upon all the buildings without the machinery?

Mr. Vilas: Objected to on the grounds previously stated.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. $54,000 for 1906 and 1907.

Q. In addition to that you placed some value on the machinery?

A. Yes, sir.

Q. In the same way you did on these other lots?

A. Yes, sir.

Q. That was your own independent judgment, was it?

A. After taking into consideration the other information that was presented to me.

Q. I ask you to give the value you placed upon the machinery.

Mr. Vilas: Objected to. 28436

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you value the holders in the same way you testified to?

A. Yes, sir.

Q. I ask you what value you placed on them?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, 1907?

The Master: He answered that. He said that in 1906 and 1907 the same buildings were there, and that he made the same valuations. 28437

Q. Now, 1908?

The Master: The buildings.

A. The buildings were the same, $54,000.

The Master: Were the same buildings there?

The Witness: The same buildings.

The Master: How long did they stay there, through 1909 and 1910?

The Witness: Yes, sir.

The Master: So that the same buildings were there from 1906 to 1910?

The Witness: Yes, sir.

Q. What was the value you placed on the buildings in 1909?

A. $54,000.

Q. And what was the value you placed on them in 1910?

A. $54,000.

Q. Was that sum you have given for each of the years 1906, 1907, 1908, 1909 and 1910, the sum for which that property would sell, with those buildings on it?

A. Yes, sir.

28439 Q. Are you able to say what value you placed upon the machinery for 1908, 1909 and 1910?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. What was the value you placed on the machinery?

Mr. Vilas: I object to that.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Are you able to say what the value of the holders was in 1906, 1907, 1908, 1909, 1910?

Mr. Vilas: Objected to.

28440 The Master: Same ruling.

Mr. Chambers: Exception.

Q. Now, Block 1682, Lot 8—that is a little triangular lot?

A. Yes, sir.

Q. Will you give the dimensions?

A. The dimensions on the street only, 73 feet 5 inches. It runs about to the center line of the block on an angle, a triangle.

Q. 73 feet 5 inches, was it?

A. Yes, sir.

Q. Did you assess that lot as of the second Monday in January, 1906?

A. Yes, sir.

The Master: And what other years?

The Witness: 1906 to 1910, inclusive.

Q. Will you give the value you placed on it wholly unimproved for 1906?

A. $7,000.

Q. And 1907?

A. $7,000.

Q. And 1908?

A. $10,000. 28442

Q. And 1909?

A. $10,000.

Q. And 1910?

A. $10,000.

Q. That is as far as you go?

A. Yes, sir.

Q. Did you visit the property at the time?

A. Yes, sir.

Q. In each of these years for which you made the valuation?

A. Yes, sir.

Q. The same as you have given with reference to the others? 28443

A. Yes, sir.

Q. The sums that you have given with reference to this property, are those the sums for which the property would sell wholly unimproved as of those times?

A. Yes, sir.

Q. In your judgment?

A. Yes, sir.

Q. Were there any improvements on it?

A. No, sir.

Q. So you did not assess it during any of those years with improvements?

A. No, sir.

Q. Now, Block 1682, Lot 11, give me the dimensions of that as it was in 1906?

A. On East 111th Street, 475 feet; on First Avenue, 201 feet 10 inches; on East 110th Street, 401 feet, 7 inches. I have no dimensions on the center line.

Q. On East 110th Street what was it?

A. 401 feet, 7 inches.

28445 Q. Did you visit that in 1906, 1907, 1908, 1909 and 1910?

A. Yes, sir.

Q. Did you assess it for tax purposes as of the second Monday in January, 1906?

A. Yes, sir.

Q. And also as of the second Monday in January, 1907?

A. Yes, sir.

Q. And as of the second Monday in January, 1908, 1909 and 1910?

A. Yes, sir.

Q. What value did you place upon the lot wholly unimproved in 1906?

28446

The Master: And each of the subsequent years?

A. $275,000 in 1906; $275,000 in 1907; $325,000 in 1908; $325,000 in 1909, $325,000 in 1910.

The Master: Wholly unimproved?

The Witness: Yes, sir.

Q. These sums which you have given, were those the sums for which the property would sell wholly unimproved, in your judgment, as of those dates?

A. Yes, sir.

Q. Under ordinary circumstances?

A. Yes, sir.

Q. Were there any improvements on that lot in 1906?

A. Yes, sir.

Q. What improvements?

A. Several buildings and boilers, and gas holders. That is all I found.

The Master: Did those same improvements stay on there during the subsequent years up to and including 1910?

The Witness: During the entire time from 1906 to 1910. 28448

Q. Did you examine the buildings in each of those years?

A. Yes, sir.

Q. And you knew how the buildings were constructed, what they were made of?

A. Yes, sir.

Q. And how they were located, the general layout?

A. Yes, sir.

Q. In 1906, did you value the buildings separately?

A. Yes, sir.

Q. What value did you place upon all the buildings excluding the holders and machinery? 28449

Mr. Vilas: Objected to. He has not told us what kind of buildings were there, whether of a technical type or ordinary type.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. The buildings were assessed at $12,000 in each year from 1906 to 1910.

The Master: It is not a question of what they were assessed at, is that your judgment on their value?

The Witness: Yes, sir.

28450 James O'Connell, Direct.

Q. Is that the sum for which that land with those buildings on it would sell, during those years, under ordinary circumstances?

A. Yes, sir.

Q. You valued the machinery, did you?

A. Yes, sir.

Q. There was machinery in some of the buildings?

A. Yes, sir.

Q. Did you arrive at your valuation the same as you did with respect to the other lots you have spoken of?

28451 A. Yes, sir.

Q. Are you able to give that value?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to state the value of the machinery?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you value the holders in each of those years?

A. Yes, sir.

28452 Q. And you arrived at the valuation the same way as you have testified to heretofore?

A. Yes, sir.

Q. Now, I ask you if you are able to state what was the value of the holders for each of those years?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Block 1692, Lot 1—you assessed that in 1906?

A. Yes, sir.

Q. And up to 1910?

A. Yes, sir.

Q. What were the dimensions of that lot?

A. 201 feet 10 inches on First Avenue; 370.57 feet on East 99th Street; 225.39 feet on the marginal street.

Q. Minus or plus?

A. Minus or plus.

Q. And on 98th Street?

A. On 98th Street, 270.24 feet.

Q. Did that remain the same from 1906 to 1910?

A. Yes, sir.

Q. Did you visit that property during each of those years? 28454

A. Yes, sir.

Q. Now, in 1906 what value did you place upon that piece of property wholly unimproved?

A. $130,000.

Q. And in 1907?

A. $130,000.

Q. In 1908?

A. $150,000.

Q. In 1909?

A. $150,000.

Q. 1910?

A. $150,000.

Q. Those were all as of the second Monday in January of those years? 28455

A. Yes, sir.

Q. Were those the sums for which that property would sell in your judgment under ordinary circumstances?

A. Yes, sir.

Q. If wholly unimproved, as of those dates?

A. Yes, sir.

Q. Did you find any improvements on the property when you visited it?

A. Yes, sir.

28456 James O'Connell, Direct.

Q. In 1906 what improvements were there?

A. There was a small tank and other outbuildings of a nominal value of—

Mr. Vilas: I object to that.

The Master: No, no.

A. There was a very small tank, I think it was an oil tank, and other outbuildings.

Q. Did you look them over and visit them?

A. Yes, sir.

Q. You knew what they looked like, and what materials they were made of?

28457 A. Yes, sir.

Q. Did they remain the same during the subsequent years you have spoken of?

A. Yes, except in the last year they improved one of the buildings.

Q. You knew about that, because you examined it?

A. Yes, sir.

Q. What value did you place upon the buildings, or did you value them separately from this tank?

A. No, I valued the thing as a whole.

Q. Some kind of an oil tank, was it?

A. I think so.

28458 Q. A small tank?

A. Small tank.

Q. Did you give that any value?

Mr. Vilas: I object to that.

A. I put a nominal value on the holder.

Q. Was there any machinery in the buildings?

A. No; not that I know of.

Q. Will you please state what you valued the improvements on that lot at?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: There was no holder there.

28459

The Master: There was an oil tank which he included in his figure.

Mr. Chambers: Only nominal.

The Master: Whatever it was, I won't take it.

Q. What kind of a tank was it, was it used?

A. I don't recall that.

Q. You don't remember how large it was?

A. No.

Mr. Chambers: I think he ought to be permitted to state.

28460

The Master: No, I won't take it. I will take his testimony that he placed a nominal value on all of the buildings and the tank, but I will not let him state the figure.

Mr. Chambers: I think he should state the amount.

The Master: I won't let him state it. My ruling applies to 1906. I understand that the same condition applied in 1907?

The Witness: Yes, sir.

The Master: My ruling applies to 1907.

Mr. Chambers: Exception.

The Master: How about 1908?

28461

The Witness: I raised the land in 1908, and as a result I took the assessment off the improvements altogether, for the reason that I did not think they added anything to the value of the property.

Mr. Vilas: I object to the last statement of the witness and move to strike it out.

The Master: Motion denied.

Mr. Vilas: Exception.

Q. In 1908 in your judgment the improvements on the property were of no value?

Mr. Vilas: I object to that.

The Master: I will allow it.

Mr. Vilas: Exception.

A. That was my judgment.

Q. And in 1909?

A. In 1909, as I recall it—I am not quite clear—but as I recall it they had made an improvement on a small brick building there, with the result that I put a value—

The Master: With the result that you put some value on the building?

28463 The Witness: Yes, sir.

Q. What value did you put on that building?

Mr. Vilas: I object to that.

The Master: Mr. O'Connell, you put a specific value on a specific building. Was the value that you put on it a value that would cover everything?

The Witness: In my judgment it was a value that would cover everything.

The Master: Then I sustain the objection.

Mr. Chambers: Exception.

Q. Mr. O'Connell, the year before that you thought the improvements were of no value?

28464 A. I thought they did not add anything to the value of the land as a whole.

Q. Now, because of this improvement to this building, you put some value on it?

A. Nominal value again.

Q. Was it only because of that?

A. That was the only reason, as I recall it.

Q. So that that really related to that improvement, that improved building?

A. That is what drew my attention to it.

Mr. Chambers: I ask him to give it.

Mr. Vilas: I object to it. He doesn't know what kind of a building it was, what was in it, he said he valued the building as a whole.

By the Master:

Q. The year before you thought the things on there were not worth anything?

A. They might have been worth something.

Q. But they didn't add anything to the value of the property?

A. No.

Q. The following year you say they fixed up a little brick building or addition?

28466

A. That is my recollection.

Q. You thought that added some value?

A. Yes, sir.

Q. The thing that added some value then must have been this new addition?

A. That is what prompted me to add the value.

Q. Would you say that did add the value?

A. I would not say that it did, only that it was an improvement of some kind that ought to have some recognition, and I restored a nominal value again.

Q. That value that you put on there was because of this little addition?

28467

A. Well, it was some improvement.

Q. A little improvement?

A. Yes, I am not clear about it.

Q. You think they may have fixed up some of the buildings upon that property, cleaned them up or something?

A. Yes, sir.

The Master: I will sustain the objection.

Mr. Chambers: Exception.

By Mr. Chambers:

Q. Now, 1910?

A. The same.

28468 James O'Connell, Direct.

The Master: That same nominal value as the year before?

The Witness: Yes, sir.

Q. These sums that you have given for that property with the improvements thereon, is that in your judgment the sum for which the property would have sold during those years with the improvements on it?

Mr. Vilas: I object to that. He has not given any sum with the improvements.

Mr. Chambers: Yes, he has, giving the im-
28469 provements no value.

The Master: I will take his answer.

Mr. Vilas: Exception.

Mr. Chambers: That question relates to 1908.

A. Yes, sir, that was the sum for which that property would sell in my judgment.

Q. Under ordinary circumstances?

A. Under ordinary circumstances.

Q. At those times?

A. Yes, sir.

Q. Now, Block 1704, Lot 5, when did you value that?

A. For the years 1906 to 1910 inclusive.

28470 Q. What were your dimensions of that lot in 1906?

A. 201 feet 10 inches on First Avenue, 613 feet on East 111th Street, 201 feet 10 inches on Pleasant Avenue and 613 feet on East 110th Street.

Q. What value did you place upon the whole lot in 1906, unimproved?

A. $285,000.

Q. Can you give me the units, or rather I will show you and we will get at it quickly. I want to cut off on the Pleasant Avenue end of this, these three, I want to cut off 281 feet?

A. The unit on Pleasant Avenue is $240 a front foot.

Q. Yes, then I want it on—

A. That is 1906 and 1907.

Q. Now then, what would that make, what would be the relative proportion of this lot on Pleasant Avenue, 201 feet 10 inches on Pleasant Avenue and 281 feet on East 111th Street and East 110th Street, as of those two years, wholly unimproved.

Mr. Vilas: Objected to on the grounds stated with respect to the other property.

The Master: Overruled.

Mr. Vilas: Exception.

A. I haven't got that figure, but I can give you the units on it. 28472

Q. Yes, and it would be what?

A. The unit on 110th and 111th Streets is $180 per front foot.

Q. And you now give me Pleasant Avenue?

A. And fifty per cent extra for corners.

Q. Fifty per cent for two corners?

A. Yes.

Q. That is, 25 per cent each?

A. No, 50 per cent for each corner.

Q. That is Pleasant Avenue and 111th Street corner, and the Pleasant Avenue and 110th Street corner?

A. Yes. 28473

Q. What does the fifty per cent apply to?

A. The one corner—two corners, and add fifty per cent of the Pleasant Avenue value. In other words, the Pleasant Avenue value would make a lot 25 by 100 worth $9,000, but the corner would be $13,500.

Q. The two corners?

A. Yes.

Q. That corner lot?

A. Yes.

Q. Any plottage?

A. Ten per cent plottage.

28474 James O'Connell, Direct.

Q. Now then, the next parcel to the east, I think it is, of this 225 feet, can you give me the units for that? That is an interior parcel?

A. The units are, on 110th and 111th Streets $180 a front foot.

Q. For that (indicating)?

A. Yes.

Q. That is west. Now, have you got that? That is 225 feet. It would not be anything for plottage there, would there?

A. Ten per cent.

28475 Q. Nothing for corners.

A. No, sir.

Q. Now, the next little parcel, which is 107 feet on East 111th Street and East 110th Street by 201 feet 10 inches, can you give me the units on that?

A. The unit on First Avenue is $280 a front foot.

Q. How much for the corners?

A. Fifty per cent each, extra.

Q. And plottage ten per cent?

A. Ten per cent.

Mr. Vilas: This is all subject to my objection?

28476 The Master: Yes.

Q. Now, this is for 1906 and 1907?

A. Yes.

Q. What is the total assessment for that whole block for those two years, wholly unimproved?

A. 1906, 1907, $285,000 each year.

Q. Now, if those units are applied to those three parcels and the computation is made, the figure, the sum that results, would you say that that was the sum for which each one of those three parcels in that lot and block would sell for under ordinary circumstances if wholly unimproved as of those dates, 1906 and 1907, the second Monday in January?

28477

Mr. Vilas: I object to that question on the ground the witness has not assessed the property or fixed a valuation on it in this fragmentary way.

The Master: I will take it. Overruled.

Mr. Vilas: Exception.

A. In my judgment that would represent the full value of it.

Q. Now, can you give me the assessment for 1908? That was a little greater, was it?

A. Yes.

Q. Then give me the unit, so we can make that computation? 28478

A. The assessment for 1908, 1909 and 1910 are the same.

Q. All right?

A. $355,000 for each year, 1908, 1909 and 1910.

Q. Can you give me the units for those three years of the three parcels as I have described them to you heretofore?

A. The First Avenue unit is $360 a front foot, fifty per cent extra for each of the corners.

Q. And then plottage of ten per cent?

A. 110th Street—

Q. Was there plottage there on that First Avenue? 28479

A. Oh, yes. 110th Street factor $240 per front foot: 111th Street $220 a front foot.

Q. With plottage? A. With a plottage of ten per cent.

Q. No corners to that?

A. I am giving you the corner of Pleasant Avenue, the Pleasant Avenue side of it, isn't it? That is what you want?

Q. Well, I thought you were giving me this interior?

A. No.

28480 James O'Connell, Direct.

Q. Oh, I see. All right.

A. That is the Pleasant Avenue side.

Q. The middle parcel too on that street, isn't it, 225 feet on East 111th Street?

A. The unit on 110th Street is $240, and the unit on 111th Street is $220 per front foot, plus ten per cent for plottage.

Q. Did you give me the Pleasant Avenue frontage?

A. Yes.

Q. That was what, for those three years?

28481 A. The Pleasant Avenue frontage was $360 per front foot.

Q. And you gave me the two corners, fifty per cent?

A. Yes.

Q. And ten per cent plottage?

A. Yes.

Q. And the First Avenue what?

A. I wish to correct that Pleasant Avenue frontage. The Pleasant Avenue frontage is $240 per front foot.

Q. During those three years?

A. Yes, sir.

28482 Q. And the First Avenue was what?

A. Plus fifty per cent for corners.

Q. Ten per cent plottage?

A. And ten per cent plottage.

Q. Now, the First Avenue, what was that?

A. First Avenue is $360 per front foot plus fifty per cent for corners and ten per cent plottage.

Q. How deep would you consider these lots on First Avenue?

A. 100 feet, and the addition to the 100 feet I would figure from the streets valuation.

Q. The depth on Pleasant Avenue?

A. 100 feet.

Q. The depth on 111th and 110th Streets?

A. 100 feet, to the center line of the street.

Q. Does the size of these lots apply to all the years you have given, 1906 to 1910?

A. You mean the factor?

Q. The lot, the depth and the width?

A. Oh, yes.

Q. That is just the same for all the years?

A. Yes.

Q. If we apply these factors, these figures to different parcels that make up this entire block and lot, would you say that those sums that are obtained are 28484
the sums for which that property would sell under ordinary circumstances, if wholly unimproved, for those dates, 1909, 1908 and 1910?

Mr. Vilas: Objected to on the grounds previously stated.

The Master: Overruled.

Mr. Vilas: Exception.

A. In my judgment, that would be the value for which they would sell.

Q. To go back to 1906, did you find some improvements on the property, and if so, what?

A. Yes, sir.

Q. What improvements? 28485

A. I found some buildings, coal pocket, trestle, oil tanks, and pumps, and things of that kind.

Q. Have you any idea what part of the property they were located on?

A. To the best of my recollection the tanks were on the western end of the property.

Q. That is the First Avenue end?

A. Somewhere in here (indicating).

Q. And the coal pockets?

A. The coal pockets and trestle were out here (indicating).

28486 James O'Connell, Direct.

Q. Say on the Pleasant Avenue side?

A. Pleasant Avenue side.

Q. And were there some buildings?

A. There were some buildings distributed around through.

Q. In 1906, and then I will ask you the other dates, how did you proceed to value it, the building separately, did you?

A. The buildings and coal pockets and trestle and parts of the building.

Q. You placed one value for those?

28487 A. Yes, sir.

Q. And was it your own independent judgment?

A. Yes, sir.

Q. What value did you place on those?

Mr. Vilas: Objected to, on the ground this witness has not shown any capacity or qualifications for valuing coal pockets and trestles.

The Master: What were those coal pockets?

The Witness: They are a sort of a gallery building, where they have one of those coal shovels, steam shovels, that go down into the hold of a boat and pick it up and send it along and dump it out.

28488 The Master: And it required a special form of construction, trestle work and shovel?

The Witness: No, the steam shovel is one of those big scoops that would not have any bearing on the trestle at all, it would be independent and separate.

The Master: Did you value that separately?

The Witness: I would, if I were valuing it.

The Master: Well, did you value it?

The Witness: I did not put any value on the shovel at all, because I looked upon it more as

28489

personal property improvements for the reason that it could be removed, it was not stationary.

The Master: All right. What do you want to know?

Mr. Chambers: I want him to tell what he valued the building.

Mr. Vilas: He wants the value he put in a lump on the buildings, coal pockets, trestle and tanks.

The Master: Yes, but he says he did not value anything other than the buildings, and he figured the rest was movable property and personal property.

28490

Mr. Vilas: The coal pocket is not movable.

The Witness: No, the coal pocket is not movable.

The Master: That was a building, was it?

The Witness: The building is not movable.

The Master: Well, it was a building, the coal pocket?

The Witness: The coal pocket is a stationary structure.

The Master: That is a building.

The Witness: Yes.

Mr. Vilas: And he treated that as a building, but he did not treat the coal shovel.

28491

The Master: I understand. Let me ask you. This building was ordinary construction, it was so formed as to receive coal in pockets, is that it?

The Witness: Yes.

The Master: There was no machinery attached to it?

The Witness: None that I assessed.

28492 James O'Connell, Direct.

Q. It was just ordinary timber construction?

A. I do not think there was any machinery inside the building.

The Master: I will take his answer.

Mr. Vilas: Exception.

Q. Will you state?

The Master: Just the buildings.

The Witness: The buildings I figured out $29,000.

Q. Now, 1906.

Mr. Vilas: Same objection.

28493 The Master: Same ruling.

A. 1906 to—

Mr. Vilas: All subject to the same objection.

The Master: Yes, same ruling.

The Witness: Same value for 1906 to 1910, inclusive.

Q. Of the buildings now?

A. Yes.

Q. Did you look them over at the time?

A. Yes, sir.

Q. And knew the general layout?

A. Yes, sir.

Q. And knew the materials of which they were

28494 made, how they were made?

A. Yes, sir.

Q. And that part with those buildings on, and the sum which you have given, would that in your judgment be the sum for which that property would sell with those buildings on as of those dates under ordinary circumstances?

A. Yes, sir.

Q. There were holders there, did you say?

A. Two oil tanks, I judged them to be, and pumps and boilers and shafting.

Q. And you placed a value on those for each of those years?

A. Yes, sir.

Q. Did you arrive at it from your own independent judgment, as you have testified?

A. Similar to the way in which I arrived at the value of the other tanks and machinery.

Q. Will you state what value you placed upon the oil tanks?

Mr. Vilas: Objected to on the grounds previously stated.

The Master: Objection sustained. 28496

Mr. Chambers: Exception.

Q. Are you able to state what was the value of the improvements on there in the nature of oil tanks during each of those years?

Mr. Vilas: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Have you any other assessment there, on your list?

A. No, sir.

CROSS-EXAMINATION BY MR. VILAS:

Q. Mr. O'Connell, you have never made any special study of gas making machinery or the contents of buildings devoted to the gas business? 28497

A. No, sir.

Q. You have never made any study of the cost of operation?

A. No, sir.

Q. Of gas making machinery?

A. No, sir.

Q. Have you made any study of the income produced in buildings devoted to the gas making business, manufacturing gas?

A. Incomes from the buildings?

Q. Yes.

A. I never had a chance to.

Q. You don't know what it might be? You don't know what the income producing capacity of a generator house or other building devoted to the gas business would be?

A. No, I would not say that I do.

Q. You have never been engaged in the gas business?

A. No, sir.

Q. Or employed by a gas company?

28499 A. No, sir.

Q. Referring to Block 1157, Lot 1, none of the testimony that you have given here with respect to the blocks and parcels of land concerning which you have been asked, has been given in reference to any of the books or records of the Tax Department. You have not had any of the books before you, any of the tax books?

A. No, sir, not during these years, during this hearing.

Q. Not during the hearing. You have been testifying from written memoranda on loose sheets of paper?

28500 A. That I took from the records myself.

Q. When did you take those from the records?

A. Within the last three or four days.

Q. After you were advised that you would be called upon to testify with respect to certain lots?

A. On these particular pieces.

Q. Who instructed you as to what property you would be called upon to cover in this testimony?

A. That young man over there submitted the list to me (indicating).

Q. Somebody from the Corporation Counsel's office?

A. Yes, I presume it was.

Q. Now, referring to Block 1157, did you testify as to the value of the buildings on that lot separately from the machinery and contents?

A. No, sir.

Q. Can you tell us what kind of buildings were on that lot when you saw them in the years 1913 and '14?

A. 1157 block?

Q. Yes.

A. In 1912, three small brick buildings.

Q. You do not carry any independent recollection of those buildings now, do you? 28502

A. I kind of do, yes, I kind of have a mental picture of them.

Q. A mental picture of them as they existed then?

A. Yes.

Q. What part of the lot were they on?

A. They were about in the centre, between the big tank and the small one, as I remember it, along the 65th Street end, I think.

Q. That lot was pretty well filled up with big tanks, was it, gas tanks or holders?

A. Yes.

Q. And the holders and the three small buildings you have described occupied practically the entire 28503 block, did they, during all those years?

A. Pretty much.

Q. You mean they occupied pretty much of the block?

A. Yes, sir.

Q. And they were there during the entire period that you have testified to, that is the entire period that you assessed that property?

A. 1912, '13 and '14.

Q. The condition of the property as to the structures on it remained practically unchanged?

A. That is as I recollect it.

28504 James O'Connell, Cross.

Q. Can you give us the dimensions of those buildings?

A. The smaller buildings, I cannot.

Q. What do you mean when you refer to the smaller buildings?

A. The building was added to in the next year.

Q. Is that the building you mean by a smaller building (indicating)?

A. No, that is another building I speak of. These three smaller buildings I speak of are the ones I mentioned that I cannot give you the dimensions.

28505 Q. Can you tell us what they were constructed of?

A. I think they were brick.

Q. You don't know how high they were, do you?

A. One of them I think was two stories, and one was one story—a one and two-story building, I think.

Q. Do you know how thick the walls were?

A. Sir?

Q. Did you find out how thick the walls were?

A. No sir; I did not.

Q. Did you go into the buildings?

A. I cannot recollect whether I did or not.

Q. You said I think that there was an addition
28506 to one of the small buildings?

A. No, I do not think I said there was. There was an additional building.

Q. So that in the later years there were four buildings?

A. I should judge there were four. I do not know what number you call them. You might call them two or three or four.

Q. Whatever it was, those buildings which you described were all the buildings you assessed on that property?

A. Yes, sir.

Q. Now, in arriving at the value of those buildings, did you arrive at it by any particular rule of calculation such as cubic contents, or rental production?

A. Based on square foot area.

Q. On the square foot basis?

A. Yes, sir.

Q. That is you had the exterior dimensions of the buildings by which you calculate the number of square feet in the building?

A. Yes, sir.

Q. And to that you assign a unit value per square 28508
foot?

A. Yes, sir.

Q. And where did you get your unit value?

A. That was my judgment as to the value of those buildings, my best judgment on it.

Q. Your best judgment as to their value for what purpose?

A. Any purpose.

Q. That is you thought that the area of the floor multiplied by the unit which you fixed, would represent a price for which those buildings would then sell, is that correct?

A. That was my judgment, yes, sir. 28509

Q. In arriving at that amount did you take into consideration the rental value or income producing value of buildings of that character in that neighborhood, and at that time?

A. Those particular buildings were assessed on a similar basis with other buildings of a like character. These particular buildings I had no way of knowing what they might rent for, because they were being occupied by the gas company.

Q. What other buildings of like character were there in that district at that time?

A. Why, small office buildings and stables and things of that sort, and store buildings around in that section. I cannot recollect them all.

Q. You classified these buildings then in the same class with small office buildings, stables and stores?

A. No, I do not say that. Of a similar nature.

Q. Well, I am asking you what you considered as a similar nature to buildings of that character?

A. I should say I assessed them on the same basis as buildings of a similar nature, in my judgment that was the value of them.

28511 Q. You did not in assessing those buildings or buildings of a similar nature take into consideration the rental value or income producing capacity of those buildings?

A. Unquestionably I did. That would be one of the elements I would take in.

Q. That would be one of the elements?

A. Undoubtedly.

Q. But you did not in the case of these particular buildings?

A. I could not. There was no basis on which to base a rental.

Q. You did not know what the income was, or

28512 what they might be rented for?

A. No, sir.

Q. When you made a division of a part of this property at Mr. Chambers' request, had you computed in advance, after hearing the testimony yesterday, the proportionate part of the property which he described?

A. I do not understand your question.

Q. As I recall it, Mr. Chambers asked you to take off 300 or 500 feet, was it?

A. Yes, 300, and separately assess 500 feet or put a value on 500 feet of this block.

Q. Of this block? Now, in 1912 to 1914, when you saw this property, you assessed it as a whole, didn't you?

A. Yes, sir.

Q. You did not cut it up into 500 feet sections?

A. No, sir.

Q. And you did not do that until yesterday, did you?

A. Yesterday, yes.

Q. It was yesterday that you did it, when you saw what would be required of you?

A. Yes. 28514

Q. And when you did so, the figure which you gave this morning was a proportional figure based upon the relative areas of the two parcels that you made the division of, is that right?

Mr. O'Brien: I object to that, that is not predicated upon any testimony.

The Master: Let us hear it.

Mr. O'Brien: This relates to the division of a lot into parts.

The Master: Let us hear the qestion.

Mr. O'Brien: Made by the witness on the stand.

(Question repeated by stenographer.)

The Master: Objection overruled. 28515

Mr. O'Brien: Yes, sir.

A. Yes, sir.

Q. So that the relation existing between the value of the whole as testified by you, and the value of the 500 feet portion of it, is the same relation that exists between the area of the whole and the area of the 500 feet portion?

A. Yes, applying the factors of those different years to those different parts.

28516 James O'Connell, Cross.

Q. That produces that proportional relation, does it?

A. Yes, sir.

A. Mr. O'Connell, referring back for a moment to Block 1157, did you refresh your recollection when preparing to testify here with respect to sales of similar property?

A. No, sir.

Q. Do you now recall any of the information with respect to sales at or about that time in that neighborhood?

28517 A. Generally along West End Avenue in that locality lots sold for $12,000.

Q. Do you now recall any sales in your territory or in the neighborhood adjacent hereto, of buildings, similar buildings to those on this block, sold separately from the real estate?

A. The buildings sold separately?

Q. Yes.

A. Why, no.

Q. You do not?

A. No.

Q. Then your testimony as to the amount which these buildings would sell for is based upon a supposi-

28518 tion that as a matter of fact did not exist?

Mr. O'Brien: Just a minute. I object.

Mr. Neumann: I object as incompetent, irrelevant and immaterial. Counsel should not characterize what the witness's testimony is.

Mr. Vilas: I am characterizing nothing; it is a fact.

The Master: I will hear the question.

(The question was read.)

The Witness: As I understood it you asked me if I knew of any buildings having been sold separately there. I said certainly not, they sell a lot with the building.

Mr. Vilas: I asked him about the fact as to the value of a building, how much it would sell for in his opinion, separate from the land.

The Master: I think the question is argumentative. I will sustain the objection.

Mr. O'Brien: Of course, a lot has got to have something to stand on. I do not know what Judge Ransom would be without his feet.

Q. Did you ever hear of a building sold without anything under it?

A. It does not bring much when it does sell that way.

28520

Q. You testified as to the value of that property in Block 1177, Mr. O'Connell, in the year 1911?

A. No, 1912, Mr. Vilas.

Q. 1912, 1913 and 1914 taxes?

A. Yes.

Q. Although your valuation was as of October 1, 1911, 1912 and 1913; is that right?

A. Yes sir.

Q. Can you tell us now a little more in detail what the nature of the improvements was on that property?

A. There was an addition to the two-story building on the northwest end of that lot.

Q. You say an addition to it?

28521

A. An addition to it.

Q. There was a two-story building on the property?

A. There was a two-story building there, and this was an addition to it.

Q. When was that put on?

A. That was added some time previous to the first of October, 1912.

Q. It was added, then, while you were on this district?

A. Yes, sir.

Q. And you made some difference in your assessment, I believe, between those two periods?

A. Yes, sir.

Q. Do you know the dimensions of that building?

A. The building originally, I believe, was about 50 by 105. This is approximately as I can recall it, 50 by 105, and that the addition made it about 75 by 105.

Q. Was the building a fireproof building?

A. Sir?

Q. Was it of fireproof construction?

A. The addition, I think, was made of fireproof
28523 construction; the original building was not of fireproof construction.

Q. Do you know what was in the building?

A. No, I do not.

Q. You did not go in?

A. I looked at the—there was a driveway there, as I remember. I cannot recall. I surely must have gone in, but I cannot recall now, only the general character of it. That building I speak of was erected there sometime between the time I was out before, on October 1, 1913, instead of 1912, and I assessed it for 1914.

Q. You assessed it for 1914?

A. Yes.

28524 Q. You do not know whether that building was used for an office building, or whether it contained machinery?

A. I do not think it was used for an office building, as I remember it.

Q. You do not know whether it contained machinery?

A. No.

Q. If it did contain machinery you did not value the machinery?

A. No.

Q. You valued no machinery on that block?

A. Yes, I did.

The Master: Not in the figures I have permitted him to state.

The Witness: No, no machinery.

Q. But you found no machinery there?

A. No, sir.

Q. You did not find a derrick on that block, did you?

A. If there had been a derrick there—if there was I would not have noticed it.

Q. You would not have paid any attention to it as a fixture?

A. No. 28526

Q. You would treat it as personal property, would you?

A. I would look upon it as such; it would be questionable.

Q. It would be what?

A. It would be questionable, and I would not assess it.

Q. Regardless of its size?

A. Unless it has a permanent status there.

Q. Did you arrive at the value of these buildings that you have testified to in the same manner that you did the buildings on the block I previously asked you about? 28527

A. Yes, sir.

Q. That is, you computed their area and applied a unit to it?

A. Yes, sir.

Q. Was that unit something that was furnished you by the Tax Department?

A. No, sir.

Q. It was something that you evolved yourself?

A. My judgment, after studying all of the different conditions of the building—my judgment of what the building would be worth.

28528 James O'Connell, Cross.

Q. Block 1670, Lot 1, comprises the entire block there, I believe, does it not?

A. Yes, sir.

Q. Do you know what is on this block, or was on this block during the years that you testified about, 1906 to 1910, inclusive?

A. Yes, sir.

Q. What?

A. A number of buildings there, gas holders, pumps, machinery, boilers and things of that kind.

Q. It was a gas manufacturing plant, was it not?

28529 A. Yes, sir.

Q. Did you go into it?

A. Yes.

Q. Go into the buildings?

A. Some of them.

Q. You said that you placed a value on about seven of the buildings, did you not?

A. No, about a dozen of them.

Q. About a dozen of them?

A. Yes, I thought there was about a dozen there.

Q. You did not place a separate value on each building?

A. No, only to the extent of figuring up the whole

28530 thing into the whole.

Q. That is, you figured up the area of the whole; is that right?

A. Yes, sir.

Q. Do you know which of these buildings were two-story buildings and which more?

A. Yes, sir, this 45 by 65 feet was a two-story building, a semi-fireproof building.

Q. That was a fireproof building?

The Master: Semi-fireproof.

A. Semi-fireproof.

Q. Were the other buildings that were there fireproof or non-fireproof?

A. Well, I think there was another one-story building that was a semi-fireproof building.

Q. How about the other buildings?

A. The other buildings were just ordinary brick buildings.

Q. Ordinary brick buildings?

A. Yes, sir, as I recollect them they were pretty old.

Q. One or two stories?

A. I think the only two story building was the one I quoted. There may have been others. 28532

Q. What part of the lot was that two-story building on?

A. I think that two-story building was on—I would not be sure, but I think somewhere in the center of the lot, 98th Street.

Q. Do you know what it was used for?

A. No, sir.

Q. Some of these buildings had machinery in them, did they not?

A. I believe they did; yes, sir.

Q. And some of them were used for office space?

A. I should judge so, yes.

Q. And various buildings had different kinds of machinery in them? 28533

A. I would assume that.

Q. Used for different purposes in connection with the gas business?

A. Exclusive of the gas business? My impression is they were used entirely by the gas people.

Q. That is what I said.

A. Yes.

Q. In placing a value on all these buildings, did you place the same unit of value on all the floor space and all the area that you computed?

A. Yes, sir.

Q. Regardless of the use to which they were put?

A. Yes, sir.

Q. That is, you figured up what in your judgment was the total area of all the buildings, and then you applied to them a fixed or given unit which in your judgment represented the proper unit to apply to obtain the value?

A. For the different buildings, yes.

Q. Well, you applied the same unit to all the buildings, as a whole?

A. No, sir; I did not.

28535 Q. You did not apply the same unit?

A. No, sir.

Q. Did you apply one unit to one building and a different unit to another building?

A. Yes, sir.

Q. How many different units did you use?

A. Two different units.

Q. You used two different units?

A. Yes, sir.

Q. What was the consideration that caused you to use a different unit?

A. I used a different unit on the semi-fireproof buildings.

28536 Q. That is, you have a different unit for a semi-fireproof building than you have for a non-fireproof building?

A. My judgment was they were more valuable.

Q. You used a higher value for the fireproof buildings than for the others?

A. Yes, sir.

Q. But with that exception you applied the same value throughout?

A. Yes, sir.

Q. Regardless of the use of the building?

A. Yes, sir.

Q. Would that unit apply regardless of the thickness of the walls of the building?

A. Regardless of the thickness of the wall?

Q. Yes.

A. Yes, sir.

Q. Regardless of the material of which they were constructed?

A. Not regardless of the material. I took that into consideration, the nature and kind of construction, and that is the reason I placed a certain unit on it because it was of that kind of construction.

Q. One unit applied to one kind of construction; is 28538
that your theory?

A. Yes.

Q. Irrespective of the kind of brick or kind of steel, or whatever it was—kind of columns?

A. That would be a specific case, and I would have to have that before me. In this particular case I considered those buildings in a class similar and took them in.

Q. You placed the same value upon those buildings as a whole for each of the years 1906 to 1910, inclusive, did you not?

A. Yes, sir.

Q. Did you make the same inspection of them each 28539
year?

A. I cannot recall now. But I usually go in and mope around, and particularly in a plant of that kind, looking around at it as I go by. I would spend maybe ten or fifteen minutes in it.

Q. You testify you visited these plots?

A. Oh, we visited them all. I mean going into them.

Q. You would naturally pay more attention to it on your first visit than on your subsequent visits if you found everything approximately the same, would you not?

A. Oh, yes.

28540 James O'Connell, Cross.

Q. But you did go into the premises and look about?

A. Oh, yes.

Q. More or less cursorily?

A. That is, I feel certain I did. I do not know.

Q. You feel certain because that is your custom, to do that?

A. It is the custom.

Q. That is what you would naturally do?

A. Yes.

Q. In placing a value on these buildings from year to year did you make any allowance in the amount
28541 that you fixed on account of the age of the buildings?

A. That I took into consideration when I put the particular factor on that I did, that they were kept in similar condition during my attendance there.

Q. You did not observe any changes?

A. I did not figure there was any difference in the value during those years. They keep them in pretty good condition when they make use of them.

Recess until 2 o'clock P. M.

Afternoon session.

28542

By Mr. Vilas:

Q. Mr. O'Connell, Block 1682, Lot 11, do you now recall what was the nature of the buildings that you placed the value upon in 1906 to 1910, inclusive?

A. There were buildings there that I valued at $12,000.

Q. I ask you if you can recall the nature of the buildings?

A. Yes, sir.

Q. What kind of buildings were they?

A. They were brick buildings. One of them was a two-story, and I believe the other one a one-story.

Q. Two buildings?

A. As I recall it, yes, sir.

Q. Did you go into the buildings?

A. I don't recollect whether I did or not.

Q. Were they fireproof, or not?

A. I don't think so.

Q. Not fireproof construction?

A. I don't think so.

Q. Neither of them?

A. No, sir.

Q. Did you value those buildings in the same way that you placed a value on the other buildings that I 28544
have asked you about?

A. Yes, sir.

Q. That is you calculated the contents, the area, and applied a unit?

A. Yes, sir.

Q. Did you apply the same unit to both buildings?

A. To those, yes, sir.

Q. Both the same?

A. Yes, sir.

Q. That is to say you added together the total area of both buildings and applied one unit to it?

A. Yes, sir.

Q. And produced a figure that you thought was the 28545
reasonable value and selling price of those buildings?

A. In my judgment, yes, sir.

Q. Do you recall whether both buildings were of exactly the same construction?

A. I don't recall that. I imagine they were of similar construction.

Q. Did you say you went into them?

A. I didn't say; I am not sure that I did. Likely I did, but I am not sure I did; I can't recall.

Q. If one of those buildings was an ordinary brick structure, and the other was brick and steel, would

that make any difference in the unit you would apply to them?

A. I don't think under those conditions and the uses they were being put to would have made much difference. Still, one might be more costly than the other, at that, but the uses they were put to, I think that was a fair value to put on them.

Q. If it is a fact that one of those buildings is a steel frame, structural steel with brick walls, and the other is what we may term an ordinary brick building, there would be a difference in the value of those build-
28547 ings, would there?

A. I would think so, yes.

Q. If you knew those facts you would show a difference in the value of the building by using a different unit?

A. I think I would.

Q. You would use a higher value proportionately of the steel structural building than for the ordinary brick building?

A. If I thought the steel structural part of it added to the value of the building, I would.

Q. Would not a steel structural building be more valuable than a brick building of the same size?

28548 A. Generally speaking, yes, but in specific cases the difference would not be very great for the uses they are put to.

Q. That is to say, you would be governed not by a difference in the material, but by the use to which the buildings were put?

A. No, I would be governed by both.

Q. But in your mind it is conceivable that two buildings as different as the two I have mentioned might be near the same relative value by reason of being engaged in the same use, is that right?

A. Not necessarily. My impression of the building is that they were of a similar nature, as far as I can recall them, and I don't really believe there was much difference, in my judgment, in the value of those buildings for the uses they were put to at that time. There may be steel in one of them, I don't recall.

Q. When you say there isn't much difference in the value, you mean in the unit you would apply to them, the relative value, is that right?

A. Yes, sir.

Q. So that it is possible that the use to which the buildings were put might have an influence upon the 28550
question whether or not they would be of different value?

A. Not necessarily.

Q. You say not necessarily, but it is a fact that it does have some influence, or may have some influence?

A. In this particular case either of those buildings would be useful for the same purpose. There would be very little difference for purposes of assessment in the unit, in my judgment.

Q. Do you say that those two buildings are useful for tht same purpose?

A. To the best of my judgment, perhaps, they would be.

28551

Q. Do you know what they were used for?

A. I do not.

Q. You didn't know what is in them?

A. No, sir.

Q. In making your valuation on these and on any of the buildings that you have been asked about here today, did you take into consideration the possible cost of constructing the building?

A. Yes, sir, I had that, and gauged my value as to what the fair value would be on it.

28552 James O'Connell, Cross.

Q. In fixing the unit which you used to multiply into the area of the buildings, did you take into consideration the cost of construction?

A. Yes, less depreciation.

Q. Less depreciation?

A. Yes, sir.

Q. How much did you deduct for depreciation?

A. That would depend.

Q. Depend upon what?

A. Depend upon circumstances in each particular case.

28553 Q. Well, what circumstances, the age of the building?

A. Wear and tear.

Q. The age of the building?

A. Not necessarily that. A building may be older than another building and be in better repair than the newer building. Each specific case must rest upon its own bottom.

Q. Did you consider depreciation when you valued these two buildings?

A. The factors that I used shows that I did; I did not figure them as new value.

Q. You figured them as buildings having some age,

28554 although age alone is not a factor that you consider in depreciation?

A. Not necessarily.

Q. If a building is kept up to date and painted when it needs it and the parts are kept in condition, you don't consider it depreciates on account of age?

A. I would consider the condition of the building by reason of the things you say now, the building would be kept up perhaps to a unit of usefulness equal to the time when it was new, almost, and that I would consider.

Q. You would not consider that as depreciation?

A. To the extent that there might be depreciation there. I cannot give a general answer to the question you have asked me. Each one would be specific, I would have to consider each one as a unit.

Q. The question I ask you is this: From year to year, as you saw these buildings and found them kept in good condition, painted when needed, pointed up when needed, you would not depreciate them necessarily simply because they were a year older each time?

A. No, sir, I would not.

Q. That is correct?

A. Yes, sir. 28556

Q. Now, as a matter of fact you found the same value in each of the five years that you assessed these buildings did you not?

A. Yes, sir.

Q. Did you make any computations as to what it would cost to reproduce or build those buildings at the time you valued them?

A. No, sir.

Q. Do you consider yourself able to do that?

A. What is that?

Q. Do you consider yourself competent to do that?

A. Yes, sir.

Q. To make up the reproduction cost of a brick and steel building? 28557

A. Yes, sir.

Q. To do that you would have to investigate the material with which it was constructed?

A. Yes, sir.

Q. Go into the building and examine it pretty thoroughly?

A. Yes, sir.

Q. Do you remember what part of the lot those two buildings were on that you say you found there?

A. I cannot recall now; I think they were about the centre of the lot, somewhere, if I recall.

Q. One was a two-story building, you said?

A. Yes, sir.

Q. In figuring the area of that building you figured double the area of one floor?

A. Yes, sir.

Q. That is, as a two-story building you would add the two floors?

A. Yes, sir.

Q. And it would have just twice the area of a one-story building?

A. Yes, sir.

28559 Q. Block 1692, Lot 1, I believe you said there that the buildings were small and that you first placed a nominal value on them, and then no value, and then at another time put back the nominal value?

A. Yes, sir.

Q. What is the nature of those buildings?

A. As I recall there was some kind of a tank I thought it was an oil tank.

Q. A what?

A. Oil tank, a small tank, and some small buildings around the place.

Q. Brick or frame?

A. That I do not recall.

28560 Q. You don't know what use they were put to?

A. No, sir.

Q. Nor how high they were?

A. No, sir, I don't remember.

Q. Were there dwellings on the lot?

A. I am pretty sure there was not.

Q. How about machinery?

A. I don't know of any machinery on it.

Q. Did you find any machinery there?

A. No, sir.

Q. Do you recall whether there was anything on the ground there, or whether it was simply vacant property?

A. It was not vacant. There were these particular little buildings around on it.

Q. Those little buildings that you speak of occupied pretty much the entire lot?

A. Oh, no.

Q. A large portion of it was vacant, was it?

A. Yes, sir.

Q. Do you remember finding any coal piled on the lot?

A. I can't recall that.

Q. Is that a waterfront lot?

A. No, it runs to Pleasant Avenue. 28562

Q. To Pleasant Avenue?

A. Yes, I think it does. The marginal street there is between that and the river front.

Q. You call it marginal street instead of Pleasant Avenue.

A. Marginal Street, yes, sir.

Q. Was that marginal street open at that point?

A. It was not open, as I recall it.

Q. Now, Block 1704, Lot 5, in 1906, you assessed that, and the lot at that time comprised the entire block, did it not?

A. Yes, sir.

Q. You didn't do as you did with Block 1157, and 28563 apportion your valuation of that lot in accordance with the diagram that the Attorney General showed you?

A. No.

Q. You merely gave your factors here on the stand?

A. Yes, sir.

Q. You made no computation except such as was made here in court as to the value of the separate fragments of this block, did you?

A. No, sir.

Q. The same thing is true of the amount which are the result of those computations as was true of the

previous lot, they represent a proportion of the value equal to the proportion which the fragment bears to the entire area?

A. You mean on this land apportionment that you speak of?

Q. Yes.

A. I assume so. I didn't make an appointment, I simply gave them my units of value.

Q. You did not make any apportionment here?

A. No, sir.

Q. You simply gave your units of value, and your
28565 total value on the different streets with the plottage, the corners, etc.?

A. Yes, sir.

Q. You testified I think that the value of the coal pockets, as you called them, and other buildings that you found on there, exclusive of machinery and tanks, was $29,000?

A. Yes, sir.

Q. And that valuation was the same for each of the years concerning which you testified if I am not mistaken?

A. Yes, sir.

Q. And you found in each years the same structure,
28566 the same improvements?

A. Practically the same conditions, yes, sir.

Q. And in the same condition in which they were when you first saw them?

A. Practically, yes, sir.

Q. You did not find any depreciation in these structures during the years that you appraised the property?

A. No, sir, they were kept in very good repair right along.

The Master: That is what the Gas Company has been trying to prove throughout this case, that they kept them in good repair.

The Witness: They did. They keep their stuff in very good repair.

Q. What part of the lot contains the coal pockets you testified about?

A. The coal pockets were on the east end of the lot.

Q. Did you value any of the machinery that was connected with this?

A. I did value the machinery, but I was not permitted to state what it was, that is the machinery that 28568
I found on that particular lot number.

Q. Well, I am speaking of the machinery in connection with the coal pockets?

A. No, sir, I did not value any machinery on that.

Q. You did not find any there?

A. No.

Q. You said something about there being a derrick there, didn't you?

A. There was a derrick there, one of those—I presume steam shovel or something.

Q. Did you find in addition to the coal pockets, or in connection with it, did you find any trestle for the conveying of coal from the water front? A. Yes, sir. 28569

Q. Did you include that in the structures you valued as buildings?

A. No, sir.

Q. You regarded that as a temporary structure?

A. No, I did not regard it at all, because it was not on that lot, I could not assess it, it was outside this marginal street.

Q. There was no part of it on the lot?

A. There was portions of it on the lot.

Q. But you did not assess?

A. I did assess that portion on the lot.

28570 James O'Connell, Cross.

Q. You did assess the part of the coal pockets on the lot?

A. Yes, sir.

Q. Do you recall that this trestle had a mechanical belt conveyor on it for conveying coal?

A. It had, as I recall it, tracks.

Q. It had tracks on it?

A. Yes.

Q. Could you move cars on it?

A. Some kind of—

Q. Move cars on this track?

28571 A. Well, I think so. I do not just recall. It was a trestle of the usual kind for that purpose of carrying coal from the barge into the building, and I assessed only the coal pockets and trestle.

Q. You did not pay any attention to whether there was any machinery in connection with the operation of that apparatus for unloading?

A. No, sir. Any machinery there I included in as a whole, which, of course, I was not permitted to speak about.

Q. On what basis did you assign the value to the coal pockets and trestle?

28572 A. What in my judgment was the cost to construct them, less their depreciation from use.

Q. That is to say, you did not, of course, treat them as you would a building where you compute the area and apply a unit to it?

A. Well, you apply a different kind of unit to that for the reason you know it costs a certain amount to build that. We have coal pockets all over the city, not only here, but coal companies and things of that kind, and compute the cost of those buildings.

Q. You have a formula for computing the cost of a structure of that sort?

A. Not any more than computing the cost of their improvements.

Q. Well, you have statistics and tables and data furnished you by the department?

A. Oh, no.

Q. Your Tax Department doesn't furnish you with any units?

A. We accumulate all the information we can, as a rule we figure them so much a running foot for these coal pockets, and the height of them, it depends on the height of them somewhat, per running foot.

Q. Does the unit per running foot vary according 28574
to the height?

A. Yes, sir.

Q. And is that the way you valued that?

A. I valued the coal pockets there as a whole at $5,000.

Q. And that $5,000 constituted part of the $12,000 which you testified to?

A. Yes, sir.

Q. It was $29,000, the total you gave?

A. It was $29,000, and that $5,000 was part of it.

Q. Now, I want to understand about this valuation of the coal pockets. You say you put a value of $5,000 on it? 28575

A. Yes, sir.

Q. Did you just put that on as a lump valuation, or did you use some unit or standard of measurement of value?

A. I took the size of it, went over it and figured in my judgment what it would cost to reconstruct a structure of a similar nature, and allowed a reasonable depreciation and placed a valuation in my judgment as to what it was worth at that time.

Q. How much did you allow for depreciation?

A. In that particular case I guess it was pretty near fifty per cent allowed for depreciation.

Q. Fifty per cent?

A. I think so.

Q. You thought it was pretty old and rundown, was that the reason for that?

A. Yes.

The Master: Well, he thought it was old. He testified it was kept in pretty good repair.

Q. And you depreciated it for age and not for lack of repair, isn't it?

28577 A. No, general wear on it.

Q. General wear?

A. Yes, and in addition to that, it is not a structure that is up-to-date. They are putting up better ones now than was up there then.

Q. How long since you have seen that coal pocket?

A. 1910 was the last time I saw it there, the last time I was up there.

Q. You don't know whether it is there today or not, do you?

A. I do not know a thing about it today, have not been over there since I assessed it.

Q. And you are not very certain as to the nature of

28578 machinery that was used to operate the apparatus?

A. No, any more than there were pumps and boilers up there and engines, and I presumed they were used for furnishing power to that trestle, at least the coal pocket, the same as for the others.

Q. Did you say you found any tanks there?

A. Tank?

Q. Yes.

A. Yes, sir.

Q. How many?

Q. My recollection is that there were two of them there about 25 feet in diameter, as I recall them.

Q. On what part of the lot?

A. I think on the west end of that lot.

Q. On the west end?

A. Toward the west end of it, yes.

Q. The coal pockets you described were on the west end of the lot also?

A. No, sir, they were on the east end.

Q. The coal pockets were on the east end?

A. Yes, the coal pockets and trestle.

The Master: On the river end?

The Witness: Yes, sir.

Q. Now, tell us what other buildings you found on 28580
that block?

A. How many?

Q. Yes.

A. There was perhaps about six buildings there, something like that.

Q. What was the largest one?

A. I have one 200 x 50.

Q. 200 x 50?

A. Yes, sir.

Q. What part of the lot was that on?

A. Oh, I do not recall. The buildings there as I recall them were mostly on the centre, about the centre of the lot and some of them on the 110th Street side, 28581
as I recall it.

Q. And what sort of a building was this 200-foot building that you described?

Q. It was a brick building.

Q. Do you know what it was used for? A. No, sir.

Q. You didn't go into it?

A. No, sir. That is I do not recall having gone into it. I do not know whether I did or not.

Q. Do you know how many stories high it is?

A. One story.

Q. One-story brick building?

A. Yes, sir.

Q. Was there any other brick buildings on the property?

A. I think they were all brick buildings on it.

Q. All that you have mentioned were brick buildings?

A. Yes, sir. And I thing some sheds along the street. If I recall rightly, I am not sure, they were frame, but I am not certain, it is so long since I was there. I am speaking according to my recollection.

28583 Q. And were they all one-story buildings?

A. No, there was a three-story building there.

Q. Three-story brick building?

A. Yes, sir.

Q. What part of the lot was that on?

A. I do not just recall that.

Q. Do you know what it was used for?

A. No, I do not.

Q. Did you go into it?

A. I do not think I went into that building.

Q. You valued all those buildings together by the same sort of standard you did the other buildings you have described?

28584 A. Yes, sir.

Q. That is you computed the area and multiplied it by a unit of value?

A. Yes, sir.

Q. You used the same unit for all those buildings?

A. Practically, yes, sir.

Q. You say practically; did you vary it in one case?

A. No, I do not think so.

Q. Used the same rate there?

A. Yes, sir.

Q. And did you allow anything for depreciation?

A. Yes, sir.

Q. How did you determine depreciation?

A. Account of their age.

Q. Did you know how old they were?

A. And the fact that they are not really a modern improvement at the present time, they could put up much better.

Q. Did you know how old they were?

A. I did not know how old they were, but I knew they were quite old.

Q. Was there any other factor than age and obso- 28586
lescence that entered into depreciation?

A. That is all.

Q. You did not examine their condition of repair either?

A. The condition was good of all the buildings.

Q. Their condition was good?

A. Yes, sir.

The Master: All of the gas buildings?

The Witness: Yes, sir.

The Master: All of the plants that you had occasion to look at?

The Witness: Yes, except where they are dis- 28587
continued, then they were allowed to run down.

The Master: So every year while you were on the job you would say the same thing about these gas buildings; they were in good condition?

The Witness: Yes, sir.

Q. The buildings were kept up?

A. Yes, sir.

Q. And any depreciation you found in any of the buildings you found due first to the age of the buildings, and secondly the fact that it was a type which you did not think was modern?

A. I would say that, yes, sir.

Q. Does that correctly express your opinion?

A. Yes, sir.

The Master: You do not want Mr. O'Connell to change his testimony about keeping the buildings in the condition he states?

Mr. Vilas: No, sir.

The Master: I would rather have his testimony on that than the experts you have had here.

Mr. Vilas: I do not expect him to change it.

The Witness: That would not affect it in the least. They are kept up. They might be kept
28589 in splendid condition, the buildings I did not assess as new. When I said I allowed for depreciation, I took that into consideration when I made the assessment.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. Mr. O'Connell, speaking of these buildings on Block 1704, Lot 5.

A. I have Lot 1 assessed as a whole, you have it subdivided there into different units.

Q. Take the whole of the buildings you found on the whole Lot 5.

A. Yes, sir.

Q. Now, you said a minute ago, in answer to Mr.
28590 Vilas' question, that you did not allow any depreciation for the three years that you assessed them. You did allow depreciation though when you first took them into consideration?

Mr. Vilas: I object to cross-examination.

Q. Did you not?

Mr. Vilas: I object to it as not re-direct.

The Master: I will allow it.

Mr. Vilas: Exception.

A. Yes, sir.

Q. They were not new buildings?

A. No, sir.

Q. And you considered any buildings that had been erected for some time had depreciated somewhat?

Mr. Vilas: I object to that.

The Master: I will allow it.

A. Yes, sir.

Q. And as to all these buildings that were not new you allowed some depreciation?

A. Yes, sir.

Q. And took that into consideration?

A. Yes, sir. 28592

Q. What do you mean when you say that the buildings were—these few he just asked you about, were kept up? Did you mean that they were not allowed to run down?

A. Yes, sir, kept in good repair.

Q. Painted sometimes?

A. Yes, sir.

Q. And not allowed just to waste away?

A. Yes, sir.

Q. Was there anything extraordinary about the way they were kept up?

A. No, sir, kept in good commercial usable condition. 28593

The Master: Point up the brick and paint up the iron?

The Witness: Yes, keep the weather from destroying them.

NICHOLAS KNOX, called as a witness on behalf of the defendant Newton, being duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Where are you employed, Mr. Knox?

A. In the Department of Taxes and Assessments.

Q. And your official title?

A. Deputy Tax Commissioner of the City of New York.

Q. How long have you been such?

28595 A. Nine years.

Q. Nine years?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. And were you appointed to that office as the result of an examination?

A. Yes.

Q. Competitive examination?

A. Yes, sir.

Q. And you are in the competitive schedules then of the Civil Service?

A. Yes, sir.

28596 Q. Prior to that what position were you in?

A. I was the apportionment tax clerk.

Q. What were you doing?

A. Apportioning tax values, real estate.

Q. How long did you hold that position?

A. Eleven years.

Q. That was apportioning the tax values on real estate in the City of New York for the City?

A. For the City.

Q. And before that?

A. Well, then I was employed in a law office.

Q. In what?

A. A law office.

Q. Was it a real estate law office, or just a—

A. Yes, we had some estates, and that gave me considerable insight into the real estate business.

Q. Did you handle the real estate in the law office you were in, or some of it?

A. Yes.

Q. That was your line?

A. That was my line.

Q. Were you admitted to practice law?

A. No, I did not get admitted. 28598

Q. Have you during all these years made it your business to keep track of the values of real property?

A. I have.

Q. In New York City?

A. I have.

Q. And buildings here in the City?

A. Yes.

Q. And unimproved lots?

A. Yes.

Q. Have you kept track of the sales from time to time?

A. I have.

Q. Of real property in the City? 28599

A. I have.

Q. Both unimproved and improved?

A. I have.

By the Master:

Q. Let me ask you, Mr. Knox, these Deputy Tax Commissioners like Mr. O'Connell and Mr. Tracey and yourself, and others, they only appraise the real estate, do they not?

A. Yes, sir.

Q. You have not anything to do with the appraisal of personal property?

A. Well, the deputies are usually assigned by the Board as examining commissioners for the purposes of examining and assessing personal property, so that we do perform the duties of assessing personal property, too.

By Mr. Chambers:

Q. Have you performed such duties?

A. I have acted as an examining commissioner of personal property, yes, sir.

By the Master:

Q. What do you mean?

28601 A. When a man is assessed for a personal assessment they usually wish to have that reduced and they come in to have that personal assessment reduced.

Q. That simply means that you take from them a statement of what personal property they have?

A. Exactly.

Q. And if that is less than the amount assessed against them, you reduce the assessment accordingly.

A. Yes.

By Mr. Chambers:

Q. Well, you hear the evidence, do you not?

A. Oh, yes, take a statement of the assets and liabilities.

28602 By the Master:

Q. You do not go out and look at the personal property, do you?

A. No.

Q. If a man says he has an automobile worth $8,000 you do not go out and look at the automobile to appraise it?

A. No, we are assigned to the real estate department.

The Master: That is what I want to make clear.

By Mr. Chambers:

Q. Do you hear the evidence of value?

Mr. O'Brien: Your Honor, while you are on that point, let me emphasize the procedure all over the country with regard to things that are taxed.

The Master: No, do not let us roam all over the country.

Mr. O'Brien: Well, in this New York State.

The Master: We will stay right in New York City. I want to have precisely on the record what I know these men do. Do not let us have 28604
any fooling about it or any misleading in the record.

You know as well as I do what a commissioner does as to the personal property assessment, and I am trying to get that on this record.

Mr. O'Brien: What I am trying to emphasize at this point is the importance of the statement of some one that is taxed.

The Master: Do not let us get into that.

Mr. O'Brien: That is part of the whole procedure.

By the Master:

Q. What I want to make clear on this record, Mr. 28605
Knox, is that the duties performed by the Deputy Tax Commissioners of Taxes, holding a position similar to yours, being the men who have previously testified and yourself, is that they have to do entirely with the appraisal of real estate?

A. Yes, sir.

Q. What you said about acting as commissioner for the purpose of the personal assessment has to do only with the statement made to you by citizens or persons?

A. For the correction of personal assessments?

Q. For the correction of personal assessments?

A. Yes.

Q. Which requires no ability on your part or no examination and appraisal of personal property?

A. No, sir.

By Mr. Chambers:

Q. What do you do about it, do you take any testimony?

A. Yes.

Q. Of the value of personal property?

A. Yes.

Q. And then you weigh that and determine it?

A. Yes.

28607 Q. The witnesses are sworn by you?

A. No, no witnesses. We take a statement of the party in interest.

Q. As to the value of different pieces of personal property?

A. Yes.

The Master: As to what he has got?

The Witness: As to what he has got.

Q. And in taking those values you weigh them and determine whether those values are right or not?

The Master: Do not let us be misled, Mr. Chambers.

Mr. Chambers: Isn't that so?

28608 The Master: No, I have seen it often.

Mr. Chambers: He makes a judicial determination.

The Master: No, I have seen it too often to think that

Mr. Chambers: Well, he said so.

The Master: Well, he does not mean just what he says. The citizen gets a notice that he has been assessed for personal property to the extent of $10,000, we will say.

Mr. Chambers: Say for automobiles.

The Witness: Pardon me. In the first instance that assessment is made by the deputy tax

28609

commissioner, and one of us is assigned to the Personal Tax Department.

By the Master:

Q. How do you know what personal property a man has?

A. Well, I do not know what that deputy in charge knows about it; he must have some knowledge.

By Mr. Chambers:

Q. But you have made one?

A. I have never made a personal tax assessment, because I have never been in charge of the Personal Tax Department.

28610

By the Master:

Q. In other words, there is a deputy tax commissioner?

A. Yes, sir; one of us.

Q. Who is assigned to the Personal Tax Department?

A. To the Personal Tax Department.

Q. Do you know whether Mr. Tracey was ever assigned there, or Mr. O'Connell?

A. I think Mr. O'Connell has acted as an examiner. I do not think he was ever in charge.

Q. An examiner?

A. Yes.

28611

Q. That means the work of hearing the citizen's complaint?

A. Yes, sir.

Q. When the citizen swears that he has not as much property as he is assessed at, you take his oath on it?

A. Yes.

Q. And then you reduce his assessment accordingly, on his oath?

A. No.

28612

Q. You do not make an examination of the citizen's property?

A. No.

Q. That is, before taking his oath?

A. No.

Q. When he says he has $500 instead of $1,000, his assessment is reduced to a half?

A. If I believe him.

Q. Yes.

A. If I do not believe him I do not reduce it.

Q. Well, your only doubt is the appearance of the
28613 man and your feeling that he is not telling the truth?

Mr. Chambers: No.

By Mr. Chambers:

Q. Supposing it is ten Pierce-Arrow cars, and he said they were worth $100 apiece?

A. I would reject such testimony.

Q. You would fix a value on the Pierce-Arrow cars?

A. Exactly.

Mr. Chambers: Of course.

By the Master:

Q. But you do not go out and look at the car to determine its value from appearance?

28614 A. I have never been assigned as a deputy for the Personal Tax Department, to levy a personal assessment.

By Mr. Chambers:

Q. What does the deputy do, does he present his side of it? Suppose you are sitting?

A. No.

Q. What is that?

A. No.

Q. You take his assessment as his part of the case?

A. Yes.

Q. And then the other fellow taxes him?

A. Yes.

Q. Mr. Knox, when you are making your assessments don't you have a book in which you record personal property in the district?

A. Yes, sir.

Q. And although you do not assess such personal property you turn that in?

A. Yes, sir.

Q. So that they can get track of the personal property?

A. Yes, sir.

Q. In other words, you have your eyes open to make a note of what personal property you find? 28616

A. Yes.

Q. As you are covering the real property?

A. Yes.

By the Master:

Q. But you do not appraise it?

A. No, sir.

By Mr. Chambers:

Q. How often did you sit, or how often have you been acting as—what do you call it, examiner—for applications to reduce personal property?

A. Every year since I have been in the department.

Q. And how many such applications have you heard? 28617

Mr. Vilas: I object to that.

The Master: I will let him state it.

A. Oh, I guess a thousand or fifteen hundred each year.

Q. And consisting of what class of property—personal property?

Mr. Vilas: Objected to as immaterial and irrelevant.

The Master: I will allow it.

Mr. Chambers: Generally.

A. All kinds of personalty.

Q. From chickens up to what?
A. Every imaginable kind of business.
Q. Boilers?
A. Yes.
Q. Engines?
A. Yes, sir.

The Master: What is the use of wasting time, Mr. Chambers? He never sees one of these things; he never appraises them.

Mr. Chambers: Well, I do not quite agree with you.

28619 The Master: But that is the fact. The witness has so testified.

Mr. Chambers: The facts have come out of the witness here.

Mr. O'Brien: Under the rulings of the Court, your Honor, he does not need to have been an engineer to appraise an engine. I will give you copious decisions on that point.

The Master: Don't give me the copious decisions. I know perfectly well when a man is qualified to give a judgment that is worth anything, but there is not any sense in Mr. Chambers being misled.

28620 Mr. Chambers: The weight that shall be given to it is one question, but you are ruling it out entirely.

The Master: Yes I do not say he is not qualified at all. But what I say is this, Mr. Chambers: You misunderstand the province and the jurisdiction of the official who hears the complainant citizen. He hears hundreds and thousands of these complaints. The citizen comes in and says "I have been assessed $10,000, it is too much." Mr. Commissioner or Deputy Commissioner says, "Well, how much have you got,

28621

how much did you have in the bank, how much merchandise did you have on hand, how much of original packages, how much jewelry did you have, how much bonds without state stamps on them did you have," and the man tells him these items and he puts them down and writes them down, and he says, "What liabilities did you have," and he writes them down, and the balance is what the man says he is willing to pay on. Nine times out of ten the Commissioner takes his oath for it; he does not see the property, he does not go out to appraise the property. He has no notion as to whether the property is good, bad or indifferent—it is a question of the oath of the man who swears to it. 28622

Mr. Chambers: Well, I do not agree with you. He could go out and examine it.

The Master: He could, but he doesn't.

Mr. O'Brien: Your Honor, you and I have many things to learn about these taxing decisions and the work that has to do with these assessors, and I hope before the case is over to give you some authorities on it, as to where they can get their information and the sources they can look to.

The Master: There is no argument about that. 28623

Mr. O'Brien: They can go to the grocery stores and find out things there, and use that.

The Master: Of course they can. There is no argument about that, and I agree with you perfectly about that—for the purpose of levying an assessment. But when it comes to proving the value of property here you have an entirely different rule. That is the trouble with it. Of course, Mr. Knox in order to appraise a plant or a piece of real estate with fixtures has got to get it the best way he can. He can go

to Mr. Jones, Smith or Robinson, and ask what those things are worth, get the best judgment he can, find out all he can about it, and his assessment is an honest assessment, made the best way he can do it. But that is a different thing from calling him to prove the value of property here.

Mr. O'Brien: You will find before you get through with this case that their judgment on a gas holder is just as reliable as Mr. Alden S. Miller's.

28625 The Master: That may be.

Mr. O'Brien: You can buy holders the same as you buy bandboxes. They are sold as a whole. You do not have to take every screw out of a plate of steel, get a thousand different units and assemble them in a big black book to get the value of the whole. I think your Honor was in error in striking out the testimony of Mr. Tracey and the testimony of Mr. O'Connell, that was based upon information through the official channels, which if they had not been proved reliable will be proved reliable, taking them as the substance of their judgment and adding to it

28626 their own experience.

The Master: All right, Mr. Chambers.

By Mr. Chambers:

Q. Block 1670, Lot 1?

The Master: What year is Mr. Knox on?

Mr. Chambers: 1917.

The Master: What other year?

The Witness: I have two years, 1917 and 1918.

Q. Was that the valuation as of October 1st, 1916?

A. No, sir, I am testifying as to 1917.

Q. Was it the 1918 tax?

A. 1917 tax.

The Master: Then you appraised it as of October 1st, 1916?

A. As of October 1st, 1916.

Mr. Chambers: That is the point I wanted to get.

Q. What were your dimensions on that lot, on 99th Street?

A. 650 feet on 99th Street, the same on 98th Street, 201 feet 10 inches on First Avenue and on Second Avenue the same.

Q. It occupied the entire block?

A. The entire block. 28628

The Master: During both years?

Q. During both years the same dimensions?

A. 1917 and 1918 the same.

Q. Did you visit that lot and block?

A. Yes, sir.

Q. Before you made the assessment for the 1917 tax?

A. Yes, sir.

Q. Did you look it over?

A. I did.

Q. And did you visit it again in 1918?

A. Yes, sir.

Q. Did you place a valuation upon the lot for the 28629 1917 tax?

A. The land $525,000.

Q. What, $525,000? That is wholly unimproved?

A. Wholly unimproved.

Q. In 1918 what value did you place upon it, or rather in 1917 for the 1918 tax?

A. Yes. $630,000.

Q. Those two amounts which you have given, do those sums represent in your judgment what that lot would sell for under ordinary circumstances if wholly unimproved?

A. Yes, sir.

Q. As of those dates?

A. Yes, sir.

Q. Mr. Knox, did you find on the lot any improvements in 1916, when you visited it?

A. Yes.

Q. What improvements? Have you got the book there?

A. Yes.

The Master: Let us have it, Mr. Knox.

Q. What improvements did you find on October 1st, 1916?

28631 The Witness: Four gas holders and several buildings. If you want the dimensions of those buildings I will give them to you.

Q. Yes, give them all to me; if you do not now counsel on the other side will ask for them.

A. One building 15 by 90, another 15 by 40, another 10 by 10, another 10 by 10, another 10 by 10, one 35 by 45, two story; one 35 by 50, 125 by 60, 10 by 70, 35 by 50, 25 by 40, 20 by 20, 60 by 270, 63 by 70, two story; 20 by 15, 20 by 30, 40 by 125. Four gas holders. That is equipped with a sprinkler system, 6,000,000 capacity of water gas, and some various other machinery.

28632 Q. Did you look at those?

A. Yes, sir.

Q. All of that?

A. Yes, sir.

Q. Look it all over?

A. Yes, sir.

Q. To know how the buildings were constructed at the time?

A. Yes, sir.

Q. What they were made of?

A. Yes, sir.

Q. How they looked?

A. Yes, sir.

Q. Their condition?

A. Yes, sir.

Q. The general layout?

A. Yes, sir.

Q. The way they were erected on the lot?

A. Yes, sir.

Q. After all that, did you place a valuation on the building separate from the holders?

A. I did.

Q. And separate from the machinery?

A. I did.

Q. What value did you place upon those buildings? 28634

Mr. Vilas: Objected to upon the ground previously stated.

The Master: Allowed.

Mr. Vilas: Exception.

A. On the buildings $100,000; on the gas holders—

Mr. Vilas: Wait a minute. I object to that.

The Master: Just on the buildings you were asked.

Q. I have never talked to you before, have I, Mr. Knox?

A. No. I never had the pleasure of meeting you until I met you in court.

Q. Mr. Knox, that sum that you have given for 28635
the buildings as for the tax of 1917, is that the sum in your judgment for which that lot would sell under ordinary circumstances with those buildings thereon?

Mr. Vilas: I object to that. That obviously is not correct.

The Master: The land with those buildings, leaving everything else off; can you give the total?

Q. Take the land, and with those buildings on it and eliminating the rest, is that what, in your judgment, it would sell for under ordinary circumstances?

28636 Nicholas Knox, Direct.

A. Yes.

Q. Then you valued the machinery, did you?

A. Yes.

Q. How did you arrive at the value of the machinery?

A. Well, I made considerable inquiry as to the value of the machinery used in the gas plant, and after making all that investigation and talking it over and getting as much of that information as I possibly could, I fixed the value of that machinery.

The Master: Do not tell us what you fixed it

28637 at.

Q. Now, you made a comprehensive study, did you, of that kind of machinery?

Mr. Vilas: I object to that.

The Master: Don't tell him what he made; he has told you what he made.

Q. I ask you, did you made a comprehensive study of the value of that kind of machinery?

Mr. Vilas: Let the testimony be filtered through the witness.

The Master: I won't allow that question. If you are not satisfied with what he told you he did, you can ask him again to state more definitely

28638 what he did.

Q. Can you give me more details of the study you made? It sounded to me that it was comprehensive but what study did you make?

A. I inquired as to the matter among many friends of mine who are engineers and the like, as to the probable value of such machinery; and upon that information I based my opinion as to its value, together with the information I acquired from consultation with the deputy in charge of the real estate of corporations of our department.

Q. Did you examine any price lists?

A. I have examined a great many price lists regarding costs.

Q. Of machinery?

A. Of machinery.

Q. Of that kind and similar kinds?

A. All kinds.

Q. Had you made inquiry about that kind of machinery before this occasion, had you made a study of personal property of that character?

A. General manufacturing machinery.

Q. You had in years before? 28640

A. Yes, sir.

Q. Will you please state what value you placed upon that personal property?

Mr. Vilas: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to state what in your opinion was the value under ordinary circumstances, what that machinery would sell for as you found it there on that date?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception. 28641

Q. Now, the holders, Mr. Knox—don't give the value of them yet—how did you value the holders, the gas holders. Give us the operation leading up to the figure but don't give the value please.

The Master: What did you do, find out the cubical contents?

The Witness: Yes, sir.

The Master: And multiplied that by a figure?

The Witness: Yes, sir.

The Master: Where did you get the figure?

The Witness: The figure I used is in general use among appraisers of such property.

The Master: What was it, a department figure?

The Witness: Yes, sir.

Q. Did you use anything else, did you feel that you were bound by that figure?

A. No.

Q. Did you use any other factor?

A. My general information that I acquired from investigating this entire subject.

Q. Had you had occasion to investigate holders prior to this?

28643 A. Yes, I made quite a study of this entire gas business before I entered upon this assessment.

Q. Did you examine data and printed matter?

A. I did.

Q. Price lists?

A. I did.

Q. Sent out by firms that constructed holders or did work of that character?

A. I would not say any special paper on holders, but I did consult a good many price lists as to the general costs of materials used in the manufacture of gas.

Q. Do you recall how they are made, what those

28644 holders are made of?

A. Not particularly, no.

Q. Well, it is a steel—

A. Yes, with a brick frame, etc., in two parts, the lower part and the upper part. I am not sure as to that construction.

Q. Are you able to say what value you placed upon these holders as of that date?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you value the buildings on that lot for 1918?

A. Buildings for 1918, $100,000.

The Master: The same buildings?

The Witness: Yes, sir.

Q. That is without the machinery and without the holders?

A. Yes, sir.

Q. Was that in your judgment the sum for which that lot would sell with those buildings thereon as of October 1, 1917?

A. Yes, sir. 28646

Q. Under ordinary circumstances?

A. Yes, sir.

The Master: You appraised the machinery and the holders for 1918 the same way that you did for 1917?

The Witness: Yes, sir.

Q. Are you able to say what was the value of the machinery for 1918?

Mr. Vilas: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. And the value of the holders for 1918?

Mr. Vilas: Same objection. 28647

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you assess that lot for 1919 taxes?

A. No, sir.

Q. Now, Lot 8, Block 1682, for 1917 tax. That is a little triangular lot, and the dimension on East 110th Street is 73 feet 5 inches?

A. Yes, sir.

Q. Have you the other two dimensions?

A. I haven't got the hypotenuse dimension, no. We treat that as a plot, 1.186 of a lot.

Q. It is contained in the southwesterly corner of Lot 11, Block 1682?

A. That is right.

The Master: Is that vacant land?

The Witness: Yes, sir.

Q. No improvements on it?

A. No improvements.

Q. Those two years that you valued it?

A. No improvements.

Q. Did you go there and visit that lot?

A. I did.

28649 Q. What value did you place upon it as of October 1, 1916?

A. $10,000.

Q. And for 1917?

A. $10,000.

The Master: You mean for the taxyears 1916 and 1917?

The Witness: No, the tax years of 1917 and 1918.

Q. You valued it as of October 1, 1916, and October 1, 1917, respectively?

A. That is right.

Q. Now, the value you have just given for those 28650 two years, is that the sum for which that lot would sell, under ordinary circumstances, at that time?

A. It is.

Q. Now, Block 1682, Lot 11, can you give me the dimensions of that?

A. On 111th Street, 475 feet; on First Avenue 201 feet 10 inches; on 110th Street 401 feet 7 inches.

Q. Then this little Lot 8 is taken off the corner of that?

A. That is off the corner.

Q. Did you visit that in 1916?

A. Yes, sir.

Q. And you placed a valuation after looking at it?

A. Yes, sir.

Q. What value did you place upon the lot unimproved as of that date?

A. $361,000.

Q. And in October, 1917, did you visit it again, some time prior to that?

A. Yes, sir.

Q. And place a value on it for the 1918 tax?

A. Yes, sir.

Q. What value did you place on it? 28652

A. $445,000.

Q. Now, those two sums that you have given represent in your judgment the sums for which the property would sell at ordinary sale on those dates, wholly unimproved?

A. Yes, sir.

Q. Were there some improvements on the lot? If so, what did you find there at that time?

A. There were two gas holders and tanks; building 45 by 32; building 65 by 50.

Q. Did you examine those buildings, those tanks and buildings?

A. Yes, sir. 28653

Q. On both of those dates you have given?

A. Yes, sir.

Q. Did you value the building separately? It looks like one building, valve house?

A. Yes.

Q. Did you value the building separately from the contents?

A. Yes.

Q. Please state what value you placed upon that building as of October 1, 1916?

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Mr. Vilas: Objected to.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. $15,000.

Q. And in 1917, for the 1918 tax, what value did you place on it?

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. The same.

Q. Those two sums you have given me for that
28655 plot, with that improvement on, excluding the other improvements, is that what in your judgment the lot would sell for with that improvement on, under ordinary circumstances?

A. Yes, sir.

Q. At those two dates?

A. Yes, sir.

Q. Then you valued the holders, did you?

A. Yes, sir.

Q. You had the same knowledge and information that you have testified to as to the other holders?

A. Yes, sir.

Q. How about the contents of the valve house, you
28656 had the same knowledge?

A. Yes, sir.

Q. That was your own independent judgment, was it, after this study that you made of this situation?

A. Yes, sir. If you want the information as to the contents I can give it to you.

Q. Yes.

A. Two 90 horse power boilers and engines.

Q. That is all?

A. Yes, sir.

Q. What value did you place on those two 90 horse power engines?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to state what was the value of those two 90 horse power boilers and engines as of those two dates?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. How about the holders, are you able to say what was the value of the holders on those two dates, 1916 and 1917? 28658

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. You did not assess that, did you, for 1919?

A. No, sir, for 1917 and 1918 only.

Q. Block 1692, Lot 1, for the same two years—did you visit that piece of property in 1916?

A. Yes, sir.

Q. And you assessed it for tax purposes for 1917?

A. Yes, sir.

Q. What value did you place upon it wholly unimproved?

A. $235,000. 28659

Q. And in 1917, for the 1918 tax?

A. $245,000.

Q. And those two sums represent, do they, in your judgment, what that lot would have sold for under ordinary circumstances on those dates?

A. Yes, sir.

Q. Wholly unimproved?

A. Yes, sir.

Q. Will you give me the dimensions of that lot as you valued it?

A. On First Avenue, 201 feet 10 inches; on 99th Street, 370 feet 6 1/2 inches. On 98th Street, 270

feet 2 7/8 inches. On Marginal Street, 245 feet 4 5/8 inches.

Q. Did you find some improvements on that lot when you visited it in 1916?

A. Yes, sir.

Q. What improvements did you find, if any?

A. Oil tanks; buildings 21 by 30.

Q. Now take the building, Mr. Knox. Did you look that over?

A. Yes, sir.

Q. And knew at the time what it was made of?

28661 A. Yes, sir.

Q. How it was made?

A. Yes, sir.

Q. How it was built?

A. Yes, sir.

Q. What material it was made of?

A. Yes, sir.

Q. Did you place a valuation upon that building?

A. Yes, sir.

Q. What value did you place upon it in 1916?

Mr. Vilas: Objected to.

The Master: Objection overruled.

Mr. Vilas: Exception.

28662 A. $5,000.

Q. Now, 1917, for the 1918 tax?

A. $5,000.

Q. Does that sum represent what that lot would sell for under ordinary circumstances with that improvement thereon on those two dates?

A. Yes, sir.

Q. Now, the other improvement you said was an oil tank?

A. Yes, sir.

Q. Just one oil tank?

A. Yes, sir.

Q. That is all you saw on the property?

A. I have it marked "Small Tank."

Q. It was not a gas holder?

A. No, 20 by 20.

Q. Did you place a valuation upon that?

A. That was all included in the assessment.

The Master: In the $5,000?

The Witness: Yes, sir.

Mr. Vilas: I move to strike out the $5,000.

The Master: Motion granted.

Mr. Chambers: Exception.

Q. Can you split those up so you can tell me? 28664

A. Let me see if I have a special note on that. I think we may separate that by putting $2,500 on each.

Q. $2,500 on the building?

A. Yes.

Q. In each year, $2,500 for the building?

A. Yes, sir.

Q. Is that the sum which in your judgment that lot would sell for under ordinary circumstances with that building on it including the tank?

A. Yes, sir.

Q. On those dates?

A. Yes, sir. 28665

Q. Was there nothing else on there?

A. No, sir.

Q. Now, the next one I have is Block 1704, Lot 5. Did you visit that block some time in 1916?

A. Yes, sir.

Q. And looked it over?

A. Yes, sir.

Q. What was the size of it at that time on 111th Street?

A. 506 feet on 111th Street, 516 on 110th Street, 201 feet 10 inches on Pleasant Avenue and 201 feet 10 inches on the westerly line.

Q. It occupies the whole block?

A. With the exception of the frontage used by the Standard Gas Company of 107 feet.

Q. Where is that?

A. On First Avenue. There is a plot there of 107 feet depth by 201 feet 10 inches occupied by the ten-story building of the Standard Gas Company.

The Master: What is the number of that lot?

Q. The part that you mentioned occupied by the Standard is this right here (indicating)?

A. Yes, sir.

28667 Q. On First Street?

A. Yes.

Q. A strip 107 feet right down through?

A. Yes, sir.

Q. Will you give me the value of that lot excluding the 107 feet of the whole lot, excluding that, as of October 1, 1915?

A. Yes, sir.

The Master: That is Lot 5?

Mr. Chambers: Yes.

Mr. Vilas: The standard is not Lot 5, is it?

The Witness: No.

The Master: That 107 foot strip is Lot 1; the

28668 balance of the block is Lot 5.

Q. Oh, that strip became Lot 1?

A. Yes, sir.

Q. Now give me the dimensions of Lot 5?

A. 506 feet on 111th Street, 506 feet on 110th Street, 201 feet 10 inches on Pleasant Avenue and 201 feet 10 inches on the westerly line.

Q. Now, give me the value you placed upon that piece of property, Lot 5, as you now describe it, on October 1, 1916, wholly unimproved?

A. $335,000.

Q. Now, as to October 1, 1917?

A. $355,000.

Q. Can you give me—all I want to do now, I want to cut off 281 feet on the Pleasant Avenue end, leaving out that parcel 225 on East 111th Street and 225 on East 110th Street?

A. Yes, sir.

Q. Flanked on either side by Lot 1, and on the other by this 281 feet parcel?

A. The tax for 1917—

Mr. Vilas: I object to that on the grounds previously stated, the witness has never made an appraisal of that fragment of property for the purposes of taxation, and upon the further ground 28670
that there is no evidence in the case that the fragment of property which it is proposed to omit is not used in the gas business.

The Master: Overruled.

Mr. Vilas: Exception.

A. For 1917, $148,680.

Q. For 1918, same appraisal?

A. For 1918, $157,500 for that 225 foot lot.

Q. That sum you have just given for these two years of that 225 foot parcel of that Lot 5, is that in your judgment the sum for which that piece of property would sell under ordinary circumstances on those dates?

28671

A. Yes, sir.

Q. What improvements did you find on this Lot 5, and if you could confine it to that 225 foot parcel that is all we are interested in?

Mr. Vilas: I object to that.

A. Do you want the sizes of the buildings?

Q. Yes, if you please?

A. 30 by 100; 20 by 20; 60 by 200; 30 by 25; 30 by 70, some coal pockets and trestle, etc.

Q. Now, these buildings, the coal pocket and trestle, etc., those are all spread all over the Lot 5?

A. More towards this 225 foot parcel.

Q. Can you remember at all now about which ones are wholly on this 281 foot parcel, or the Pleasant Avenue end?

A. If I remember correctly it is the coal pockets down on this end.

The Master: By this end you mean what?

The Witness: Towards Pleasant Avenue.

The Master: That is the river end.

The Witness: Yes.

Q. And how about the slips and trestle?

28673 A. At the same place.

Q. And the other things, too?

A. Yes.

The Master: The coal pocket and coal hoisting apparatus is over near the river end of it, Pleasant Avenue?

The Witness: Yes.

The Master: The other buildings are over toward the other end of the lot?

The Witness: Yes.

The Master: But you could not say they are all over on the 225 foot strip, could you?

The Witness: No.

28674 Q. Did you value all those buildings separately, or did you take them one by one? Can you give them to me one by one?

A. I think I can.

Q. In the order in which you testified a minute ago? Maybe you had better say the dimensions as you give the value.

Mr. Vilas: Objected to on the grounds already stated.

The Master: Overruled.

A. I would give the total value of $57,000.

The Master: Of all the buildings, including the trestle and coal pockets and coal handling apparatus?

The Witness: Yes.

The Master: That includes the coal handling apparatus?

The Witness: The improvements are $57,000, that includes the buildings and the improvements.

Mr. Vilas: I object to a lump figure including machinery.

The Master: I will strike out this lump figure for trestle work. I do not think the witness 28676
is qualified.

Mr. Chambers: It is on a piece of property we do not care about anyway.

The Master: Then you have not been harmed anyway.

Mr. Chambers: I was going to pick it apart.

Q. Right there, Mr. Knox, can you give me the value placed on each one of those buildings for this 1916 and 1917 tax?

A. 1917, the value of the 30 by 100 garage, 13,750 square feet of brick at $1.80, the factor or value I used in computation, $24,500; 3,900 square feet of frame at $3,900 and 1,000 feet of trestle, $500 and 84,000 28677
of fireproof building, $21,000, making a total of approximately $50,000—$49,900 for the tax of 1917. For 1918 the amount is a little different.

Q. Same improvements, aren't they?

A. Same improvements, the calculations were extended $7,000.

Q. More?

A. More for the improvements.

Q. Can you give the buildings the way you valued them?

A. Yes, the buildings are the same with the exception that 8,400 square feet of fireproofing at $2.50,

28678 Nicholas Knox, Direct.

that was raised to $28,000 instead of $21,000, so as to make $57,000 for improvements.

Mr. Vilas: The first figure he gave was the trestle, wasn't it?

Mr. Chambers: He gave the trestle at $500.

The Witness: $500.

Mr. Vilas: $500 for the trestle?

The Witness: Yes, sir.

Mr. Vilas: The first figure he gave was coal pocket, wasn't it?

Mr. Chambers: That trestle is what you object to?

28679 Mr. Vilas: I want to find out what he is giving us.

Q. Now, these values that you have just given for these two years, would they be the sum for which, in your judgment, that lot would sell, Lot 5, with these improvements on as of those dates?

A. Yes, sir.

Q. Under ordinary circumstances?

A. Yes, sir.

Q. You visited those buildings there that you have been describing on this Block 1704 and looked them over?

28680 A. Yes, sir.

Q. Knew what they were made of?

A. Yes, sir.

Q. And how they lay on the ground?

A. Yes, sir.

Q. How they were built?

A. Yes, sir.

Q. It was after that examination you placed these values?

A. Yes, sir.

Q. Now, Block 1642, Lot 32, will you just give me the dimensions as to that first so we can check that?

A. 50 feet 5 inches by 100 feet 11 inches.

Mr. Chambers: There are eight of these deputy tax commissioners, and I do not think it is fair to keep them here.

The Master: Let those go that you do not think you will need.

Q. Block 1642, Lot 32, the dimensions you are going to give me?

A. Lot 32 is 50 feet 5 inches on 114th Street and 100 feet 11 inches in depth.

Q. Did you visit that in 1916?

A. Yes, sir. 28682

Q. And valued it for tax purposes?

A. Yes, sir.

Q. What value did you place upon that?

A. $22,000.

Q. Wholly unimproved?

A. Yes, sir.

Mr. Vilas: That was for the 1917 taxes?

The Witness: That is for the 1917 taxes.

Q. Now, the next year's taxes, what value did you place on it, wholly unimproved?

A. For the next year, for the year 1918 I merged Lot 32 with Lot 33.

Q. Yes. Now, the dimensions after adding to Lot 28683
33?

A. So that for 1918 the dimensions will read 25 feet 2 3/4 inches on Third Avenue by 150 feet 5 inches on 114th Street, running on a line parallel with Third Avenue 75 feet 8 1/4 inches, thence westerly 50 feet 5 inches, thence southerly 100 feet 11 inches to the point or place of beginning, making that an L plot.

The Master: What did you call that?

The Witness: Lot 33 for 1918.

Q. And what value did you place upon that Lot 33 as you now describe it for 1918 taxes?

A. $55,000.

Q. That is wholly unimproved?

A. Yes.

Q. Now, on Lot 32 in 1916 did you find any improvements? If so, what?

The Master: That is that Third Avenue office, isn't it?

The Witness: On Lot 32, that was improved by a three and a two-story building.

Q. Did you place a valuation upon that?

A. Yes, sir.

Q. You looked it over, did you?

28685 A. Yes, sir.

Q. And knew what it was made of and how it was made?

A. Yes, sir.

Q. And how it was constructed?

A. Yes, sir.

Q. What value did you place upon it?

A. $28,000.

By the Master:

Q. For the building?

A. Yes, sir.

Q. What kind of a building was it?

Mr. Vilas: Four buildings.

28686 The Master: No, it was a one and two-story building, wasn't it?

The Witness: Do you mean the tax of 1917 now, Mr. Chambers?

By Mr. Chambers:

Q. Yes.

A. Lot 32?

Q. Yes.

Mr. Vilas: Well, that is only part of a building.

A. It is only part of the building. You are talking about 1917 now, Lot 32?

Q. Yes.

A. That is the separate building on the rear of this lot known as No. 33 now?

Q. Yes.

A. The building is $28,000, making a total assessment on Lot 32 for the 1917 tax of $50,000.

By the Master:

Q. What kind of a building was it, Mr. Knox?

A. A three and two-story building.

Q. Made of what?

A. Brick.

Mr. Vilas: I object to giving fragments of 28688
buildings, your Honor.

The Master: No, he is telling us what was on Lot 32 for 1918.

The Witness: We merged the two. The building runs one-story clean through.

The Master: I was wondering how a 3-story building with a 2-story extension would be worth $28,000.

The Witness: Yes, sir.

Mr. Vilas: It is obvious it is only part of the building.

The Witness: You want to remember when we say a 3-story building, why it is practically a 28689
4-story building, because one story counts for two or two and a half stories, if you note it properly.

By Mr. Chambers:

Q. For 1918, for the 1918 tax, what value did you put on the new Lot 33 with all the improvements thereon?

A. Do you want the Lot 33 for 1917?

Q. Yes, the "L" now.

Mr. Vilas: No, for 1918.

A. 1917 on 33? That is the lot on Third Avenue.

Q. Yes, you are right.

A. $15,000 for the improvements and $33,000 for the land

Q. What was on it, Mr. Knox, the old Lot 33?

A. A building 25 feet 2 3/4 inches, covered by 100.

Q. Did you look that over?

A. Yes, sir.

Q. And knew how and of what it was made?

A. Yes, sir.

Q. Give the value that you placed upon the new
28691 Lot 33 as of October 1, 1917—that is the "L" Lot?

A. That is right.

Q. The improvements—just the improvements?

A. The improvements for the tax of 1918, for the entire year, on Lot 33, would be $45,000.

Q. These sums that you have given, first for Lot 32 wholly unimproved and Lot 32 improved, with the improvements, the old Lot 32 wholly unimproved and with improvements, and then the new Lot 33 wholly unimproved and improved—are those the sums for which in your opinion those lots would have sold at those times under ordinary circumstances?

A. Yes, sir.

28692 Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. VILAS:

Q. Mr. Knox, when you say that you made a study of the various items in connection with the gas company's property for the purpose of assessing it, you do not mean that you made a study of the gas making business for the purpose of ascertaining cost?

A. I mean to say that I read several reports of the gas company to the Public Service Commission and those reports contained considerable information and data that I found was very helpful to me in my work.

Q. As throwing some light on the value of the gas company's property?

A. General information concerning the gas business.

By the Master:

Q. Where did you get the gas company's report?

A. Why, I think I got the last one from Mr. Straus.

Q. Who is Mr. Straus?

A. I think he was connected with the Public Service Commission for a time.

Q. The original? 28694

A. Oh, no, your Honor, one of the printed copies.

Q. A printed copy of their own report?

A. Yes.

By Mr. Vilas:

Q. Do you mean a bound volume?

A. A bound volume.

Q. With a lot of statistics?

A. A lot of statistics.

Q. Of gas companies?

A. Yes, and electric companies.

Q. The report of the Public Service Commission?

A. Yes.

Q. Not the report of the company to the Commission? 28695

A. Well, it contained all information, I presume, furnished by the gas company and the electric company.

Q. Well, do you know whom it was furnished by; you found—

A. Yes, general information.

Q. The material in this volume, the volume published and available to the public?

A. Yes, sir.

Q. Do you know what year's report you examined?

A. I was assigned to the East Harlem District about March, 1916, and some time after that, a short time after my assignment, I immediately went to work to acquire as much information concerning the businesses of that district as I could acquire; so it must have been about that time that I was able to get the report of the Public Service Commission.

Q. You do not know what year that report related to, do you?

28697 A. It might have been for 1916 or 1915.

Q. You say it might have been. Do you really know?

A. I think it was the last report that the Public Service Commission had on the matter.

Q. It was the last published report you could get?

A. The last published report.

Q. You know, do you not, Mr. Knox, that the published reports of the Commission are three or four years behind the actual date?

A. Well, I said it might have been 1915. I am not sure of the date.

Q. Well, you say it was 1916 you went on this dis-

28698 trict?

A. Yes. And I said it might have been the report prior to that, probably 1915.

Q. It might have been the report as early as 1913?

A. It might have been.

The Master: It must have been a very useful function, to have reports come out two or three years late.

The Witness: Well, the use was to give me a sort of general knowledge concerning the gas and electrical business. A man does not like to go to work without being equipped in some

way, and I thought that was a good way to equip myself by becoming familiar at least with the terms or something.

Q. It gave you a familiarity with the terms, and what else? Did it give you any figures as to the value of the various pieces of property?

A. Well, I did make notes of the costs and all the other matters stated in that report.

Q. Have you taken notice of costs of water gas sets, for instance, and things of that sort?

A. I may have.

Q. And buildings? 28700

A. I read the books generally.

Q. Mr. Knox, take up Block 1670, Lot 1. You found gas works on that lot, did you not?

A. Yes, sir.

Q. And you have given us a figure of $100,000 as representing the buildings?

A. Yes, sir.

Q. Exclusive of machinery and holders?

A. Yes, sir.

Q. In arriving at that figure did you say you visited these works? Did you go into the buildings?

A. Some of them.

Q. All of them? 28701

A. Some of them.

Q. What buildings?

A. I do not remember which. I went into some of them; I do not remember going into all of them.

Q. You did not make a complete tour of the plant, in other words?

A. I did not go through all of the buildings; I went through some of the buildings, but I did cover the plant.

Q. You were in the office building?

A. Yes.

Q. And then you went out into the open space among the buildings?

A. Yes.

Q. And you looked at some of the buildings from there?

A. Yes.

Q. Did you go into the generator house?

A. I don't remember having gone into the generator house.

Q. Do you remember going into the purifying house?

28703 A. No, I do not remember that.

Q. Did you go into the boiler house?

A. No.

Q. Do you know how many stories there are in the generator house?

A. I have them enumerated.

Q. You have each building enumerated?

A. Yes.

Q. As to the number of floors?

A. The number of stories, yes.

Q. In arriving at the number of floors in the building, do you determine that by actual inspection, or do you determine that by the height of the building?

28704 A. When I look at a building I am pretty nearly able to judge whether it is a one-story or a six-story building.

Q. Without going into it?

A. Yes. I know ordinarily when I am looking at a building whether it is a one-story or a five-story building.

Q. Suppose you see a building which is of the height of an ordinary two-story building and you find that it contains large machinery and so forth, and as a matter of fact has but one floor in it; do you treat it as a two-story or a one-story building?

A. In calculating the building's value I treat it as a two-story building.

Q. You treat it as a two-story building regardless of the fact that it has but one floor?

A. Yes, sir.

Q. Because of the height of the walls?

A. Yes, sir.

The Master: What height do you figure a floor at?

The Witness: About 15 foot.

Q. So that, as a matter of fact, you could determine the number of floors on which you were going 28706
to put the value, or which you were going to assess to a given building, by an inspection of the outside of it?

A. Yes, sir.

Q. That is what you did at this plant?

A. Yes.

Q. In arriving at a valuation of $100,000 as a whole, for all these buildings, did you arrive at a separate value for each building or did you take them all and arrive at one sum as representing them all?

A. Oh, I think that in my tentative figures I valued each parcel separately.

Q. You valued each building separately? 28707

A. I am pretty sure I did, yes.

Q. How did you determine the area of the buildings?

A. Well, I had all the data of my predecessor with me with respect to the size of the buildings.

Q. You used that, did you?

A. Why, yes. Our department supplies us with considerable information to help us in our work.

Q. Yes, that is they supply you with the dimensions of the buildings?

A. Yes.

Q. And some description of them, their height?

A. Yes.

Q. And the character of construction?

A. Yes.

Q. That you took from the information received from your predecessor in the district, did you?

A. Yes, it is my deputy commissioner's field book.

Q. And that is the book from which you have been giving testimony today?

A. I gave testimony from the annual record today.

28709 The Master: You used your field book too, did you not?

The Witness: I used my slips here and my field book to refresh my memory.

Q. And when you gave dimensions of buildings, as you did in detail on this block, did you testify from the field book or from the data furnished you?

A. I testified in part from what we call our small maps or bond company map. I testified to one lot from the bond company map and from extracts made a day or so ago from those maps.

Q. I am speaking now, Mr. Knox, of the dimensions of buildings which you gave in great detail?

A. No, I gave the dimensions of the lots.

28710 Q. And you also mentioned the buildings on this lot, 15 x 40, 10 x 10, 35 x 50, and so on. That information was information that you received from your predecessor or from the department, was it not?

A. As the notation in my field book is in my own handwriting and not in the handwriting of my predecessor, I will swear that the information is my own information.

Q. And did you get that information first hand by making the measurements or from some other source?

A. I very likely did. It is several years since I

done this. I very likely acquired the data first and then entered it in my field book.

The Master: Taking your own measurements?

The Witness: In some cases I must have. Oftentimes we have to do it ourselves.

Q. Well, you would remember if you made measurements of all the buildings up at this gas works at 99th Street, would you not?

A. I would not necessarily remember that, because that is a common thing for me to do. I measure nearly every building that I assess, but whether I 28712
put it down in the book or not—I am comparing the building I am assessing with the data in my book, and I do not necessarily write it in my own handwriting. If it is a 20 x 50 building and I place it myself in the book, I say it is right.

Q. You testified, Mr. Knox, to a dimension of a lot and of buildings in great detail. That you took from the field book?

A Yes, sir.

Q. Not from the original record of assessments?

A. Well, I can supplement my testimony by reference to the annual record, if you want.

Q. Does the annual record show? 28714

A. I presume it does show.

Q. I want to know whether that does show that?

A. I will look at the record.

Q. Are your dimensions copied into the annual field book?

A. Yes, I think so. Sometimes for shortening, though, they may say, "And other buildings" or something of that sort, because it only requires a short description and not a definite description of the property.

Q. When you measure these buildings by yourself you pace them off, don't you?

A. Often, in fact, invariably.

Q. Invariably?

A. Yes.

Q. You get your size by pacing?

A. Yes.

Q. You do not take a rod and tape measure and take it that way?

A. No. After you have assessed 10,500 separate parcels for ten years you become very familiar with
28715 the frontage, depth and height of buildings.

Q. Yes, you are able to judge by pacing off pretty accurately what the dimensions are?

A. Yes.

Q. In making the valuation which you have testified to on this block, $100,000, with the buildings, did you arrive at that by taking the area of the buildings and applying a unit to them?

A. Yes, sir.

Q. Did you do that in a lump sum, taking and adding together the combined areas of all the buildings, or did you take the buildings separately and apply the units separately?

28716 A. I very likely, according to the note in my book took the buildings separately.

Q. You say very likely; you are not sure of that?

A. I am pretty sure of it, because I have used different factors of value, which shows I have taken into consideration the condition of the building, what depreciation and so forth has set in.

Q. In other words, you would apply a different unit or different factor to one building that you would to another?

A. Yes, sir; exactly.

Q. Is that what you did in this case?

A. Certainly.

Q. You are sure of that?

A. Positively.

Q. What considerations influenced you in making changes in the factors that you applied to the area of the buildings?

A. Well, sometimes I am anxious to allow for depreciation.

Q. Was that the case at this plant that you are speaking about?

A. Sometimes I do not agree with the deputy I succeed or follow. I have my own notion of value.

Q. Well, I am asking you what considerations— 28718
supposing you have two brick buildings. You had here a number of brick buildings, did you not?

A. Yes.

Q. All engaged in substantially the same use; that is, the same business?

A. Yes.

Q. And you applied different factors to different buildings. Now, I am asking you as to this case, in this particular instance what considerations there were that caused you to apply a different factor to one building rather than another?

A. Well, one might be frame and another might be brick.

Q. Then they would not be buildings of the same 28719
character, would they?

A. No.

Q. Then, they necessarily would not call for the same factor?

A. One building might be a very old building, in very bad condition, and the other might be a new building, not of the same character. Therefore we would have to use different factors.

Q. Did you find buildings there that were very old or very much older than others, buildings of the same general character?

A. Well, I would have to refer to my field book to see what unit I used there. I think the buildings were all alike, with respect to brick buildings. Do you refer to Block 1670?

Q. I am talking about Block 1670, Lot 1.

A. Well, one building there is assessed at a different unit of value than the others, and the reason of that is it is a semi-fireproof building. I used a unit or factor in all the other buildings, what we call a dollar and a half a square foot, but on this semi-fireproof building I used a unit or factor of $2.50. That
28721 is the only difference. All the brick buildings are assessed at the same thing.

Q. Except as to this building that is semi-fireproof, or that you call semi-fireproof, you used one unit as to all the other buildings?

A. Yes, sir.

Q. Which is this building called semi-fireproof?

A. It is like a retort building, and the size seems to be 60 x 270.

Q. How many stories?

A. 60 x 270. That seems to be the building.

Q. How many stories, did you say?

A. It looks like one story here.

28722 Q. You don't remember it?

A. I don't recall, there are so many notes here I can't recall that.

Q. You don't know whether it was one-story or two or three?

A. I would not say that. I see I have a note here that looks like one-story.

Q. You don't know how many stories—

A. Just wait a minute. Yes, sir, I will say it is one-story.

Q. You don't know how many stories you would naturally expect to find in a retort house, do you, because that is what that is?

A. Well, I don't want to guess.

Q. Can you tell me the character of construction of the building immediately adjoining this building that you have described as semi-fireproof?

A. I think they are all ordinary buildings.

Q. Is there a boiler house next to it, does your field book show that?

A. One building is called an office, the next is called meter, the next is called the purifying establishment, the next is called condenser, exhaust and retort and generator, retort, retort, etc. These are just little notes that I have here.

28724

Q. Take the generator house, is that immediately next to the one you called semi-fireproof?

A. It may be.

Q. And isn't it of substantially similar construction to that building?

A. Yes, sir, I have it assessed for the same factor of value.

Q. That is on the basis of a semi-fireproof building?

A. Yes, sir, $2.50 a square foot.

Q. What about the building that you called the exhauster house?

A. Exhaust, that is 25 by 40, is that the building you mean?

28725

Q. If it is the exhauster house, isn't that of similar construction to the building you have described as semi-fireproof?

A. I haven't assessed it at the same unit of value, no.

Q. You didn't put the same unit of value on it?

A. No.

Q. Will you say it was not of the same construction?

A. As I have not assessed it at the same I will say it is not the same construction.

Q. If it were of the same construction as you have described as being assessed at $2.50 a square foot, it would receive the same amount in valuation?

A. Yes, sir.

Q. Is it not a fact, then, that all of the buildings but one received the same unit of value, namely $1.50?

A. All but two buildings, that is, the retort and the generator.

Q. Now, where did you get this figure of $1.50 a square foot?

A. That is the concensus of opinion of builders,
28727 contractors, engineers and deputy tax commissioners of large experience.

Q. Opinion as to what, as to the value of a brick building?

A. As to the value, cost of reproduction.

Q. That is, the cost of reproduction?

A. Yes, and what the building would sell for under ordinary circumstances.

Q. You place those two items as representing the same amount?

A. Yes, sir.

Q. Now, Mr. Knox, supposing you had a brick building, say at 42nd Street and the river, for in-
28728 dustrial purposes, would you assign the same unit of value to that building as you assigned to this building, if it was of similar construction?

A. Would I, you say?

Q. Yes.

A. Shall I answer that question?

The Master: Yes, answer it.

By Mr. Chambers:

Q. Can you answer it?

A. I would rather not answer it, because the facts are not sufficient to warrant an opinion by me.

Mr. Chambers: That is an answer.

By Mr. Vilas:

Q. Well, I am saying that all the facts—let us say that all the facts are the same except the location, the same building but located in a different place?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and speculative, highly so.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Chambers: I object to it on the ground that there are not facts enough there, I take it, for the witness to answer. 28730

The Master: Why not? The witness has said that he valued a building at 88th Street or 89th Street according to the height and length of the building, so much a square foot of brick work. Is that right?

The Witness: Yes, sir.

By the Master:

Q. $1.50?

A. Yes, sir.

Q. Mr. Vilas says, put that building down at 42nd Street instead of up at 88th or 89th Streets. Would you value it in the same way? Why isn't that perfectly proper? Why can't you answer that, Mr. Knox? Why is there any trouble about that? 28731

A. In the first place, because a like building placed in Hickstown—

Q. Placed where?

A. Some farm colony in Ohio.

Q. No, I am talking about 42nd Street and 89th Street, in Manhattan?

A. A like building placed at 42nd Street and Broadway, I think, would not be a similar case.

Q. Why not?

28732 Nicholas Knox, Cross.

A. I consider that the location there would materially affect the possible income from that building and its productiveness and might change my opinion with respect to its value.

Q. But you said $1.50 a square foot was what it would cost to replace it?

A. Yes, ordinarily.

Q. Would it cost the same to replace it at 42nd Street as at 88th Street?

A. I am not so sure of that.

Q. Why not?

28733 A. I know when it comes to building a reinforced concrete building in the heart of Brooklyn—

Mr. Vilas: I am not speaking of reinforced concrete.

A. I want the Master to understand why I don't want to answer that question offhand. To build a reinforced concrete building in the heart of Brooklyn costs $1.50 a square foot. To build the same building down on the Bush docks by the Bush Construction Company costs only $1.04 a square foot. I say, therefore, that I am not able to answer this question absolutely correctly.

Q. Let us move up to Manhattan. What differ-
28734 ence is there or can there be between 42nd Street and 89th Street?

A. Because many things are to be taken into consideration.

Q. Give us some of them?

A. The haul, sometimes, the transportation facilities, all sorts of things, in drawing material. I can't think of what sort of a building any one might want to put on the westerly side of 42nd Street and Broadway where it might be an extra cost to get materials.

Q. Assuming the same conditions?

A. Well, if you build a stable building in one part of town and built a stable building in another part of town, it might be alike.

Q. Was this a stable we are talking about?

A. No, it was an ordinary gas building, and I am not so sure that to build an ordinary gas building at 42nd Street would cost exactly the same.

Q. Where do you get your figure of $1.50 a square foot from anyhow?

A. That is generally accepted.

Q. By whom is that accepted?

A. By people— 28736

Q. Who told you that?

A. We have been talking to people who do building and contracting.

Q. For how long?

A. A great many years.

Q. When did this $1.50 a square foot come in?

A. I think that is common knowledge.

Q. How long?

A. Since I have known how to figure the value of real estate.

Q. For fifteen or eighteen or twenty years you have taken a basis of $1.50 a square foot?

A. Yes, sir. 28737

Q. When brick was $3 a thousand and brick is $17 a thousand now?

A. That is the cost of reproduction today in abnormal times; that is a different proposition.

Q. Are you talking of the time when brick was $3 a thousand?

A. I am talking of the time when I made the assessment, in 1916.

Q. What was brick worth in 1916 in this market?

A. I can't say positively that it was worth more than $5 or $6.

Q. Where did you first get the notion that you could put up this kind of brick work for $1.50 a square foot?

A. At the time I levied this assessment.

Q. You said you heard it fifteen or eighteen years ago?

A. You said about the price.

Q. Yes.

A. The prices have been—

Mr. Chambers: I object to the Master cross-examining the witness.

28739 The Master: Why do you object to my cross-examining the witness?

Mr. Chambers: Because I think counsel for the complainant has a staff of lawyers for that purpose and I think they ought to do it, for one thing.

The Master: What I am trying to get at—

Mr. Chambers: I think they were doing it all right.

Q. You say that you took the figure of $1.50 a square foot for the brick work?

A. Yes, sir.

Q. And you say that is the reproduction value at

28740 that time?

A. At that time.

Q. And you say you have been doing that for the last fifteen or eighteen years?

A. For a lot of years.

Q. Let us go back for fifteen years—what was the cost of brick?

A. I am not so sure on that.

Q. What was the cost of labor?

A. Well, I think you might divide everything by two and get the price, about.

Q. Well, I think you are wrong. Do you know

whether the price of brick has fluctuated during the last fifteen years?

A. It fluctuates every day.

Q. Do your unit prices fluctuate?

A. We take the factor of value which is generally and usually taken, and consider it.

Q. Is that a factor that is assigned to you by your department?

A. No, sir, the department does not tell us to use any factor. The department says that we are to use our best judgment, our intelligence, in making assessments. I go around as an assessor and I acquire such 28742
information as I possibly can concerning the value of these different kinds of buildings and when it comes to figuring the value of a building I apply the factor which brings that value, sometimes it may be one dollar and twenty-five cents, sometimes one dollar and fifty cents.

Q. But you say you have used one dollar and fifty cents for years?

A. A method of calculation, a handy way of figuring the value of a building quickly, but it is not a hard rule, we are not bound by that rule.

Q. But didn't you tell me you had adopted that rule and used it for fifteen or eighteen years? 28743

A. Yes.

Q. Don't you adopt the same rule at 42nd Street as at 89th Street?

A. Yes, if it is a like thing.

Q. Isn't that what started this discussion, by Mr. Vilas asking you that question?

A. I can't say that it ever changes.

By Mr. Vilas:

Q. Now, Mr. Knox, just recurring for a moment again to this cost of reproduction at 99th Street, so that I understand your position on that, let us assume

a residence, say a brick residence on West End Avenue near 105th or 107th Street which cost, say, one dollar and a half per square foot to reproduce, a brick residence, would that be the factor at which you would assess that property for taxation?

A. Yes, sir.

Q. You would say in that case that the cost to reproduce and the sale value would be the same?

The Master: I think the witness has already answered that question.

Mr. Vilas: All right.

28745 Q. Take Block 1682, Mr. Knox, if you can. You found two buildings there, did you not?

A. Yes, sir.

Q. Were they both of the same type?

A. I think they were.

Q. And did you apply the same unit of value to both of them?

A. Yes, sir.

Q. Do you know what they were used for?

A. For the purposes of the gas company.

Q. Is that the best answer you can make?

A. That is the best answer I can make just now.

Q. Do you know whether one of them was a steel

28746 structure?

A. I am not sure about that.

Q. If one of them was of steel construction, with brick walls, and the other was a brick structure, would you use a different unit of value?

A. I would ordinarily.

Q. But you did not in this case?

A. No.

Q. In your assessment on the two you assessed them for two years, didn't you?

A. Yes, sir.

Q. And it was the same amount for both years?

A. Yes, sir.

Q. Now, take Block 1692, Lot 1, you assessed that for two years, didn't you?

A. Yes, sir.

Q. And you assessed the same amount both years on the building?

A. Yes, sir.

Q. Which you have computed in court here to have been $2,500?

A. Yes, sir.

Q. Did you make a separate assessment on the building at the time you made the assessment?

A. I must have, but I haven't the exact data here. 28748

Q. You say you must have?

A. Yes.

Q. You don't remember doing it?

A. No.

Q. You assume that you made a separate estimate?

A. I assume so, because I usually do.

Q. Because you usually do?

A. I usually do, yes.

Q. Do you recollect how large a building that was?

A. I believe the size to be 21x30.

Q. And did you apply the same unit of value to that building which you did to the buildings in 1682?

A. I think I did.

Q. Now, Block 1704. 28749

A. Yes, Lot 5.

Q. Yes. You made an apportionment of that. When did you make that apportionment?

A. Concerning the 225 feet?

Q. Yes.

A. Right here in the court room.

Q. You did this on the stand, did you?

A. Here in the court room, yes, sir.

Q. At the time Mr. Chambers asked you the questions?

A. I had done it previously.

Q. You had already made the computation in advance?

A. Yes.

Q. You never made an appraisal of that 225 feet of property for taxation, did you, separately?

A. Not separately.

Q. This computation which you have made is purely a ratio, is it not, based on area?

A. Yes, sir.

Q. And the amount which you have stated for each
28751 of the years 1917 and 1918, as applying to the lesser area, bears to the total assessment the same ratio that the lesser area bears to the whole area, is that right?

A. Exactly.

Q. You mentioned among the improvements on there a building 30x100 or is it 50x100?

A. 30x100.

Q. Do you know what that building is used for?

A. I believe it is a garage.

Q. One or two stories?

A. I believe it is a one-story.

Q. Fireproof construction?

A. I presume so.

28752 Q. Did you apply the same unit to that building you did to the other buildings on the block?

A. I applied a unit to that building of two dollars.

Q. I believe you said you applied a unit of $1.80 on some brick building, didn't you?

A. That is right, $1.80.

Q. Was that the unit you applied on all the buildings?

A. Not on the frame building. There was a frame building there.

Q. You applied a different unit on the frame building?

A. Yes.

Q. Most of the buildings on that block were brick, weren't they?

A. Yes, sir.

Q. And you applied the same unit to all of them?

A. Yes, sir.

Q. And you arrived at your valuation of those buildings in the same manner as you did the buildings at 99th Street, of which I have already asked you this afternoon?

A. Yes, sir.

Q. You used a different unit? 28754

A. Yes, sir.

Q. You used $1.80 here, where you used $1.50 elsewhere?

A. Yes, sir.

Q. And was that $1.80 based upon what you believed it would cost to reconstruct the building?

A. That was one of the factors taken into consideration.

Q. One of the factors. What were some of the others?

A. Well, the use to which the building was put.

Q. The use to which it was put?

A. Yes. 28755

Q. Would you vary the unit which you used in accordance with the use of the building?

A. I think the utility of the building has much to do with its value.

Q. It would make a difference?

A. Yes.

Q. So that the final figures which you arrived at does not necessarily represent the cost to reproduce?

A. It represents what the property would ordinarily sell for under ordinary circumstances.

Q. It represents what it would sell for?

A. Yes.

Q. And does it represent the cost of the property?

A. That is what we are asked to put down, what it would ordinarily sell for under ordinary circumstances.

Q. Well, I asked whether it represents the cost to reproduce the property?

A. Yes.

Q. It does?

A. Yes.

Q. So that you took into consideration in arriving at that factor the use to which the property is put?

28757 A. Yes.

Q. Would you say whether the use to which this property was put at the time you inspected it was an element which increased the value or decreased it?

A. I think it tends to increase its value.

Q. Tends to increase it?

A. Yes.

Q. You made a computation on the stand for the purpose of eliminating from the total value you have given of the improvements, this coal pocket, did you not?

A. Yes, sir.

Q. And you made that computation with a factor of

28758 $1.80 for brick?

A. I do not think there was any special value given to the coal pocket.

Q. I am speaking of the coal pocket now. You made a computation by which you produced a figure which you said was $49,900 as the value of the buildings?

A. Yes.

Q. Did you use $1.80 for the brick there?

A. Yes.

Q. How many square feet?

A. 13,750.

Q. You used another factor for certain square footage of frame structure?

A. Yes, $3,900.

Q. Now, when you came to value that in the following year, 1918 taxes, you reached a higher figure, did you not?

A. Yes, sir.

Q. Was that by reason of the addition of some property or by reason of a higher measure of value?

A. A readjustment of the values.

Q. A readjustment of the values?

A. Yes. 28760

Q. You mean by that that you concluded in the next year the property was worth more than it was the previous year?

A. Yes.

Q. And did you use a higher unit?

A. In my calculations I must have. I haven't a memorandum of that here.

Q. You think you valued the same property and used a higher measure of value?

A. Yes.

Q. Did you use a higher value in 1918 because the cost of reproducing the buildings was higher, or because the sales values of the buildings was higher? 28761

A. Not because the reproduction was higher, but because I believed that the value fixed was low and ought to be corrected to a higher value.

Q. Do you know whether the cost of reproduction of those buildings was higher in that year?

A. I believe it was higher.

Q. That was not the reason that influenced you?

A. That may have been one of the reasons that entered into the fixing of the values. A great many things, you know, enter into fixing the values, and I took all those things into consideration and decided it was low, and I made the readjustment.

Q. Did you take into consideration in connection with this property its possible rental value or income value?

A. No, sir.

Q. Now, referring to Block 1642.

A. Yes, sir.

Q. In 1918, that is in making the valuation for the 1918 taxes, you merged these two lots in one?

A. Yes, sir.

Q. Now, with reference to the lot which is now 33, is it?

28763 A. Yes, sir.

Q. Just tell us what the improvements are on that new lot?

A. There is a three and a two-story building.

Q. Two buildings?

A. On the rear part of that Lot 33, and there is a three and a one-story building on the front part.

Q. Am I to understand there are four buildings on that lot?

A. Yes, sir.

Q. You say there are four buildings?

A. Yes, sir.

Q. And two of them are three-story buildings and

28764 two of them two-story buildings?

A. I think a four, two and three-story.

Q. How is that?

A. That is because one story is considered two. That one story runs through all the way, through into the rear of that lot, and that first story is considered two. That will make the four stories for that lot on the rear.

Q. You consider the first floor as two stories?

A. Yes. That would make that building there four stories, with the two stories in the rear, and the other is a one and a three on the front, on Third Avenue.

Q. One and three?

A. Yes.

Q. And what was the total valuation that you assigned to the improvements in 1918?

A. In 1918 the improvements are $45,000.

Q. $45,000?

A. Yes, sir.

Q. That is not the value of the land and improvements?

A. No.

Q. But the value of the improvements themselves?

A. Yes, sir. 28766

Q. And what was the valuation in 1917 of the same improvements?

A. $43,000.

Q. Those are all brick buildings?

A. Yes, sir.

Q. And in arriving at your valuation of those brick buildings, did you compute the area and multiply it by a factor of value, as you have in these other cases?

A. Yes, sir.

Q. And what was the unit of value which you used in 1918?

A. On the inside building, that is the one on 114th Street, I used $1.80; and on the Third Avenue building $2.25. 28767

Q. Was that Third Avenue building a semi-fireproof building?

A. I am not sure.

Q. Did you use different measures of value in 1917, from what you did in 1918?

A. No.

Q. You used the same?

A. Yes.

Q. And found additional property?

A. Yes, sir, if not I think there must have been some alterations. I think they broke through the property and made it one lot. There is where we merged 32 and 33.

Q. So that in arriving at a higher value in 1918 than you did in 1917, you arrived at that value by reason of taking more property and not by reason of change in your rates?

A. No, I am not so sure about getting more property. I think the property is the same.

Q. If you did not change your rate how did you
28769 arrive at the valuation?

A. This figure then, it was figured as three and two stories, whereas when I looked at it again I found that the first story was equal to two stories, and that is the reason I made the change for that following year, 1918.

Q. That was for 1918?

A. In your assessment you first determined that the first story was equivalent to two?

A. Yes.

Q. And that is what makes the difference?

A. That makes that little difference, yes. It is a matter of a couple of thousand dollars.

28770 Q. And do those figures constitute what in your opinion, it would cost to reproduce the property?

A. Yes, sir.

Q. Do you think the property could be reproduced at that amount?

A. Yes.

Q. And you think that is also the sale value of the property?

A. I think it is.

Q. Did you take into consideration in any respect in arriving at the value the possible rental value of the property?

A. No.

Q. And did not consider that in arriving at the value of the buildings?

A. No. I suppose I took that into consideration with all other things in fixing the value of the building. I take into consideration all possibilities.

Q. But you did not make any computations?

A. Not special computations.

Q. Of possible rental value or income value of that building?

A. No.

Q. Is this the book you spoke of having consulted 28772
when you became assigned to this district (handing witness book)?

A. I think there was more than one volume. I think I had several volumes. I think I had two, three or four volumes, making a complete report. It may have been for 1916, yes, but I see Mr. Straus's name is here, and I presume that was made at the time he was chairman of the Board.

Q. Would you say that you had in your possession a book like the one that you now have?

A. Well, I am under oath, I hate to swear positively.

Q. I do not want you to swear to anything you are 28773
in doubt about?

A. I believe that I have this book, together with all the others making up a complete report.

Q. With others of a similar character?

A. I believe so.

Q. Can you point out to us in that book anything, or any information that you used or acquired for what you say is your general knowledge?

A. Oh, no; I looked through that book for the purpose of familiarizing myself with gas affairs, and that

is about all I can say that I made any concrete study of.

Q. You said that this book that you had consulted had various details of gas property?

A. Yes.

Q. But you will not undertake to point out to me here any of the information that you consulted?

A. Oh, I looked over those tables generally.

Q. You looked over the tables?

A. Yes, I looked over the books generally.

Q. You will not say that you read the entire book?

28775 A. Well, no. I will say I looked over it in a cursory manner.

Q. Did you make use of any of the information in there in fixing the value of this property?

A. No, I won't say that I did, specifically.

Q. Can you point out to me in this book any specific information—

A. No.

Q. (Continuing.) Either in the tables or the text, that aided you in arriving at the values you have testified to?

A. No.

Q. It is a fact, is it not, that this book does not

28776 show any of the details concerning which you have testified?

A. No.

Q. You say it does not?

A. No.

Q. Is there any general information in here that you can point to, that you used in arriving at any of your valuations?

A. No, it was just to familiarize myself with gas matters.

Q. Did you study the operating statistics?

A. I just liked to look them over.

Q. The operating expenses?

A. Everything.

Q. Do you find in there any figures about the cost of buildings?

A. I do not remember.

Q. Any figures about the value of property, or land?

A. No, I won't say that I have. In fact I do not remember, Mr. Vilas. I would not swear concerning anything that is in that book, because, as I say, I have not read it in three years, and I don't remember. 28778

Q. Then, in other words, you cannot point out to me anything in the volume which I show you, which you specifically used or which was of specific value to you in your appraisal work?

A. No, sir.

The Master: I think we have had enough of that.

Mr. Vilas: That is all.

Mr. Chambers: That is all, Mr. Knox.

JOHN R. PETERSON, a witness called on behalf of the defendant Newton, being duly sworn, testified as follows: 28779

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Peterson, where are you employed?

A. In the Department of Taxes and Assessments, Bronx office, 177th Street and Arthur Avenue.

Q. How long have you been a Deputy Tax Commissioner?

A. 21 years.

Q. And did you take a civil service examination?

A. I did.

Mr. Ransom: We will admit that he was a Deputy Tax Commissioner.

Mr. Chambers: Well, we will go right on. He said that; you are admitting nothing.

The Master: It was all covered when he was called as a complainant's witness.

Mr. Chambers: He was never called as a complainant's witness.

Mr. Ransom: He was not called by us.

28781 The Master: I thought he was, Mr. Judge.

Q. You were appointed to this list after a competitive examination?

A. I was.

Q. And you took your oath of office as Deputy Tax Commissioner?

A. I did.

Q. And you entered upon your duties?

A. I did.

Q. Mr. Peterson, before you became a Deputy Tax Commissioner, what business were you in?

A. In the building line.

Q. Whereabouts?

28782 A. In the Bronx, mostly.

Q. How long had you been in the building business before you were appointed a deputy?

A. About five years.

Q. Building construction?

A. Yes.

Q. Any other kind?

A. Well, buildings up to five years. Prior to that I was—

Q. Dwellings, and office buildings?

A. No, not office buildings.

Q. Garages?

A. Well, I have built some garages.

By the Master:

Q. When?

A. Lately.

Q. What?

A. Not way back then.

By Mr. Chambers:

Q. Lately?

A. Within the last three or four years.

The Master: I was trying to find out whether you built garages back in those days. 28784

Mr. Chambers: Barns, I meant.

Q. Have you bought and sold real estate?

A. Yes, sir.

Q. Have you kept informed of the sales of real estate?

A. Yes, sir.

Q. In New York and the Bronx?

A. I have.

Q. During all of this time?

A. Yes, sir.

Q. Have you kept track of mortgages on property in the City of New York.

A. Yes, sir. 28785

Q. And rentals?

A. Yes, sir.

Q. Have you kept posted on rentals?

A. Yes, sir.

Q. And you make it your business, do you not, to keep track of these subjects I have just asked you about?

A. Yes, sir.

Mr. Vilas: I object to the leading questions. The testimony should come from the witness.

The Master: I will allow the question.

Q. Lot 1, Block 3236, Mr. Peterson.

A. For what year?

Q. 1910.

A. Well, there was such a number.

Q. For what taxes?

A. For the taxes of 1910.

Q. That would be the first Monday—or the second Monday of January, 1910?

A. Yes.

Q. For the 1910 taxes?

A. For the 1910 taxes that is.

28787 Q. You assessed it, did you, for the 1911 taxes, the second Monday in January, 1911?

A. I assessed it for 1910 and 1911. We have two parcels in that exhibit (indicating) for 1910.

Q. I will not ask you about the 1910 tax; we will go on with the 1911. Give me the lots, the two parcels as you assessed them?

A. Not in 1911. In 1911 there was one parcel. They were consolidated for the year 1911.

Q. For the 1911 taxes is it shown on this Exhibit 178?

A. It covers the whole parcel.

Q. I want to see if your dimensions are the same

28788 as these on this Exhibit 178.

A. Yes.

Q. Did you visit that property just prior to fixing the value on it in 1911?

A. I did.

Q. And looked it all over?

A. Yes, sir.

Q. And after looking it over what valuation did you place upon it as of the second Monday of January, 1911, unimproved?

A. $200,000.

Q. And did you do the same thing for the 1912 taxes?

A. Yes, sir.

Q. What value did you put on it then?

A. $200,000 unimproved.

Q. And for the 1913 taxes?

A. The same thing.

Q. You looked at it for the 1913 taxes, October 1, 1912, and its value is as of October 1, 1912, for the 1913 taxes?

A. Yes.

Q. For the 1914 taxes? 28790

A. $199,000.

Q. Is that the last you assessed?

A. That is the last I assessed.

Q. These figures that you have given me for these years, are those the sums for which in your judgment that property would sell under ordinary circumstances, wholly unimproved?

A. They are.

Q. Go back to the second Monday of January, 1911, for the 1911 taxes. Did you find any improvements on it?

A. We found construction or subconstruction of foundations for the tank. 28791

Q. Did you place any valuation on the improvements for the 1911 taxes?

A. $25,000 for the improvements.

Mr. Vilas: Wait a minute. I object. I move that that be stricken out. I did not have a chance to object.

The Master: Motion granted.

Mr. Chambers: Exception.

Q. There was a subbase or a substructure? A. Yes, sir.

28792 John R. Peterson, Direct.

Q. You looked it all over?

A. Yes, sir.

Q. Did you fix a valuation on it from your own independent judgment?

A. I did.

Q. Were you familiar with such construction as you found there?

A. I was.

By the Master:

Q. What kind of construction was it?

A. It was a cement construction for the foundation
28793 of the tank. It is down in a hole and it was on its way up. It took a couple of years before it was a tank. It was in the course of construction.

Q. You are just giving your judgment as to the cement work?

A. Yes, sir.

The Master: I will let him give that.

Mr. Vilas: Exception.

Q. You were familiar with such construction?

A. Yes.

Q. Cement construction?

A. Yes.

Q. Had you ever engaged in such cement construc-
28794 tion?

A. It is all building construction there, cement construction.

The Master: I will take his figures on that.

Mr. Vilas: I would like to ask this witness some question on that subject. We object to his qualifications.

Q. Was there any other improvement on this besides the substructure?

A. No.

The Master: Application denied.

Mr. Vilas: Exception.

Q. What value did you place on the improvements?

The Master: We are just talking about this—

Mr. Chambers: That is all that was on there, he said, the foundation for the holder.

Q. What valuation did you place then upon this lot, with that structure or foundation there as you found it, for the 1911 taxes?

Mr. Vilas: Objected to for the reasons already stated.

The Master: Overruled.

Mr. Vilas: Exception.

A. $225,000. 28796

Q. For the whole thing?

A. $25,000 for the building and $200,000 for the land. That is the valuation I placed on the property for the year 1911.

Q. Was that sum in your judgment, that you have given for that lot unimproved and with that improvement on, the sum for which it would sell under ordinary circumstances at that time?

A. It was.

Q. The next year, for the 1912 taxes, what improvements were there?

A. I put on $200,000 for the—

Mr. Vilas: I object to that. 28797

By the Master:

Q. What was there in progress the following year?

A. The tank was still in progress.

Q. There was that same construction?

A. The same construction.

Q. And the same cement foundation construction?

A. The steel was going up as well, but it was not finished when we came off the field.

Q. How did you know how much steel had gone in?

A. Well, we could see the size of it. It was still laying right in front of us. It was all there.

Q. How many tons of steel did you figure on?

A. We did not figure it by the ton.

Q. How could you figure it, then?

A. The building was so much. I forget their figure when they filed the plan, but I was positive there was that much steel in it.

Q. Did you look at the plans filed with the department?

A. I was on the job and saw their plans and talked with the superintendent.

Q. Did you see their figures of the cost of construc-
28799 tion?

A. They did not have any figures of the cost of construction.

Q. How could you tell how much steel had gone in? What were they paying for steel per ton then?

A. I could not tell you that.

Q. For the fabricated steel?

A. I could not tell you now.

Q. Did you see the plan then?

A. Well, I was almost safe on my assessments. They were almost finished with it.

Q. Well, you were pretty low, were you not?

A. Probably low. If anything I was low.

28800 Q. It was a guess, was it not?

A. Not exactly a guess, no.

Mr. O'Brien: I object to this inquiry of the Master.

Mr. Chambers: He is a builder.

Mr. O'Brien: It is outside of the scope of the Master's authority to conduct a cross-examination like this.

The Master: I am assuming that; for even the builder who is qualified cannot simply look at something and say there are 100,000 tons of steel at so much a ton.

Mr. Chambers: No, he said he saw the progress of it, he was on the job, talked to the men.

By Mr. Chambers:

Q. Did you see the specifications at some time or other?

A. They were laying there before me and I went in and spoke to the superintendent.

Q. Mr. Peterson, did you see the layout there as the thing went up? First, you saw the foundation?

A. We saw it excavated, we saw the cement go into the foundations, we saw the cage go into the hole. We saw the steel construction go up and everything, and 28802 saw it finished.

Q. And you saw the men working on it as it went up?

A. All the way through.

Q. Did you see the pieces of steel?

A. They were jacked in by big cranes, like derricks.

The Master: Well, let me see about this.

Mr. O'Brien: I object to your Honor taking the witness in hand at this time.

The Master: Your objection is noted.

Mr. O'Brien: Exception.

By the Master:

Q. I understood you were in the building business 28803 at one time?

A. Yes, sir.

Q. What kind of buildings did you put up?

A. Frame and brick dwellings.

Q. Did you ever put up any steel buildings?

A. I did not put up any steel buildings.

Q. Did you ever have any buildings of steel construction?

A. I have assessed lots of others worked out in proportion to this one. I have had all kinds of steel buildings.

Q. I do not care about that. For the purpose of assessments your calculation may be all right, but I am talking about expert testimony in a law suit, which is on an entirely different basis.

Mr. Chambers: Before this goes too far, may I ask some of counsel to sit down.

The Master: Including Mr. O'Brien?

Mr. Chambers: No, I would like to have Mr. O'Brien stand right where he is.

The Master: I am going to grant your request. All counsel will take their seats. I will grant that
28805 motion.

Mr. Ransom: I suppose that applies to Mr. Maltbie also?

Mr. O'Brien: I just want to be where I can demur to your Honor's conducting the cross-examination of the witness.

The Master: I have not heard your voice so weak that it could not carry from over there. I am going to conduct the cross-examination of this witness myself as to his qualifications.

Mr. Chambers: I object.

Mr. O'Brien: But his qualifications have not been objected to by counsel for the complainant.

28806 Mr. Vilas: They certainly have.

The Master: You did not hear Mr. Vilas, then?

Mr. Chambers: We object. I would like to examine him.

The Master: I thought you had examined him.

Mr. Chambers: No, he was taken plumb bang out of my hands.

The Master: Do you think you can cross-examine him on his qualifications?

Mr. Chambers: I think I was, but I was going a little further.

The Master: I will let you go a little further if Mr. O'Brien will take his seat. Go ahead and see if you can qualify Mr. Peterson to testify on it.

By Mr. Chambers:

Q. You saw these materials that went into it some time or other?

A. I was there all summer—that is, in and out now and then.

Q. Had you used steel in the construction of the buildings that you built at some time?

A. No, there was no steel in the Bronx in them 28808
days.

Q. What is that?

A. There was not steel used in the Bronx much them days; they were mostly small houses.

By the Master:

Q. You could not by looking at this work going in judge the weight of the steel going in, could you, or the quantity?

A. No, sir, I could not, but we knew it—at least I knew that we were assessing this at five cents a foot, and we knew the capacity of this tank, and it was so far advanced, and there was so much in it.

Q. Really, what your testimony is, in giving the 28809
value of the tank, once it got beyond the cement work you were figuring at five cents a cubic foot for the contents of the tank as finished?

A. We were.

Q. Did you do that with reference to the foundation too, taking that percentage of the entire job?

A. I threw that all in on the tank.

Q. What I am getting at is this, Mr. Peterson: When they had gone to the extent of completing the cement foundation you figured that it was going to be

how much, 15,000,000 cubic feet, the tank, or gallons or whatever it was?

A. 10,000,000.

Q. And on that basis you figured it at five cents a cubic foot?

A. Finished.

Q. Finished. And when they had gone on with the foundation work you figured that was five per cent of the total work, and you figured that much for the foundation, did you? Is that the idea; is that correct?

28811 A. Yes, about that.

The Master: I will not take the testimony. I will grant the motion to strike out his evidence as to the foundations. That is what was wanted?

Mr. Vilas: Yes.

Mr. Chambers: I except.

Mr. Ransom: Also the 5 cent figure?

The Master: No, I will leave that in.

By Mr. Chambers:

Q. You mean you valued the foundation at five cents?

A. Well that would be five cents.

Q. When you valued the foundation you didn't

28812 have in mind the five cents did you?

Mr. Vilas: I object to that.

The Master: I will allow it.

A. I took it as the total cost. I thought there was that much cement there in the ground.

The Master: You never used cement in construction up in the Bronx did you either?

The Witness: Oh, yes, we used it for foundations.

The Master: You used a little cement mortar, didn't you?

The Witness: No, we built good buildings in the Bronx.

28813

The Master: Don't cement mortar make a pretty good foundation?

The Witness: Well, concrete is cement, too. That is what they put in there, cement.

The Master: How much did you figure a cubic yard?

The Witness: I figured it by the foot.

The Master: How much a cubic foot?

The Witness: 20 or 25 cents.

The Master: How many cubic feet did you figure on?

The Witness: I haven't got my figures; that is ten years ago.

28814

The Master: Did you actually figure on the number of cubic feet?

The Witness: I did.

The Master: I will let the testimony stand as to the value of the cement work.

Mr. Vilas: Let us see what he knows about this.

The Master: I have seen.

Mr. Vilas: I want a chance to cross-examine.

The Master: No.

Mr. O'Brien: Let him bring these hothouse fellows, these chicken fed fellows from Baltimore and St Louis, and see what you get then.

28815

The Master: I struck out Mr. Peterson's testimony as to the value of the cement foundation work. I have reversed myself and restored that testimony. I stand on my ruling however that I will not allow the statements made by him as to valuation of the steel structure which went on the cement foundation.

Mr. Chambers: I haven't asked him about that yet.

The Master: Go ahead and ask him.

Q. For the 1912 taxes—was it nearly done for 1912?

A. I can't say just how close it was.

Q. What value did you place upon it for 1912 taxes?

Mr. Vilas: Objected to.

The Master: Objection sustained. I understand Mr. Peterson, that that figure includes a lot of steel work?

The Witness: It does.

The Master: Objection sustained.

Mr. Ransom: It should be physically stricken
28817 from the record, the witness persists in answering.

The Master: No, I have sustained the objection.

Q. Are you able to state what was the value of that property with the improvements on it as of October 1, 1912?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Were there any other improvements on there for the 1912 assessment?

A. They had started the governor house, which was
28818 not finished either.

Q. When was it that was started, about 1912?

A. No, in 1911 they made this second progress report.

Q. That was begun in 1911?

A. Both of these were in progress during the period I visited the property in 1911 for the 1912 tax.

Q. Did you see that governor house being erected?

A. Yes.

Q. Did you see the plans and specifications?

A. Well, I don't know as I saw the specifications of the governor house; I didn't pay much attention to it, it was a shell.

Q. For the 1911 tax did you assess that governor house?

A. No.

Q. It had no value then?

A. I didn't place any value on it.

Q. In 1912 did you assess the governor house?

A. No.

Q. It had not yet reached a stage where you called it any value?

A. No.

Q. For the 1913 tax, did you assess anything for the governor house?

28820

A. Everything complete.

Q. Then you placed an assessment on all the improvements?

A. I did.

Q. There wasn't anything else there except the governor house and tank and apparatus in connection with it?

A. No.

By the Master:

Q. What kind of a governor house was this?

A. It is a brick building.

Q. All brick?

A. All brick with the machinery inside of it.

28821

Q. What is it, just a great big open space? What kind of floors did it have?

A. It is a one-story building, 30 to 35 feet high.

Q. It is really almost as high as a 3 story building?

A. Yes. Do you want the size of it?

By Mr. Chambers:

Q. Yes.

A. 109 x 73 feet 6 inches.

Q. Did you value that building separately from the holder?

A. I did.

Q. What value did you place upon that building?

Mr. Vilas: I object unless it appears that it is separate from the machinery in it.

The Master: I understand it was separate from any machinery.

The Witness: No.

The Master: Machinery in it? Your estimate of value was for building and machinery?

Q. Can you give me what you valued the building at excluding the machinery in it?

A. The total assessment was—

28823 The Master: No. Have you got a figure for the building without anything else?

The Witness: Yes.

The Master: What did you value the building at without anything else?

The Witness: $40,000.

Q. That is for the 1913 tax?

Mr. Vilas: I object to that.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. 1913 tax.

Q. In 1914 did you value that building for the 1914 taxes?

28824 A. I did.

Q. What value?

Mr. Vilas: I object to that.

The Master: Same ruling.

Q. Did you value the holder and machinery for 1913 and 1914?

A. I did.

Q. What value did you place on the holder and the machinery in 1913 and 1914?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, did you scrutinize the return made to the State Board of Tax Commissioners?

A. You mean Schedule S?

Q. Yes.

A. There was no Schedule S when I was making this. I got my data on the tanks and machinery from Mr. Cremens.

Q. You examined the data he had?

A. He helped us arrive at these closing figures.

Q. Did you use your own judgment in valuing the holder and machinery?

Mr. Vilas: I object to that. 28826

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you ever assess any personal property, had you ever been assigned to assess personal property by the Tax Department?

Mr. Vilas: I object to that as immaterial.

The Master: I will take the witness's answer on that.

A. Yes, sir.

Q. Had you ever assessed any engines?

A. Well, I thought you meant personal taxes, otherwise, no.

The Master: Did you ever appraise any personal property? 28827

The Witness: Other than engines and boilers that go in with real estate in ordinary buildings.

Q. Did you ever sit to hear complaints against personal property assessments?

Mr. Vilas: Objected to as immaterial and irrelevant.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you use units on the value of this lot and block for 1911 taxes? If so can you give me the units?

Mr. Ransom: For the land?

Mr. Chambers: Yes, sir, and the boilers and engines later, if he can.

A. I had 56 lots on Fordham Road.

Q. How wide and how deep?

A. 25 x 100.

Q. What was the unit for those?

A. $2,000 a lot.

Q. How deep?

A. 25 x 100.

Q. Anything for plottage?

28829 A. Well, there is more lots than that there. There are 183 lots there altogether in that parcel. 56 lots were at the Sedgwick Avenue valuation. 54 were from the Harlem River Terrace, and the balance Fordham Road.

Q. How much a lot for that?

A. $800 a lot. 800 interior lots at the rate of $400 a lot. I added ten per cent for plottage.

Q. Anything for corners?

A. There was only one corner there, and that was very little value.

Q. You have given me, have you, all the lots and their value?

28830 A. Approximately.

Q. Where were your interior lots?

A. The middle, in here.

Q. Some of them fronted on Harlem River Terrace?

The Master: No, they didn't front anywhere.

A. Between Harlem River Terrace and Sedgwick Avenue.

The Master: Absolutely interior lots without any frontage on any street.

Q. Now, the construction of improvements on this property, where is that, north and south?

The Master: Or East and West, which end of the property?

A. All Sedgwick Avenue and Fordham Road—you mean the new buildings?

Q. Yes.

A. Right in there (indicating).

Q. By "right in there" you mean—

A. The southerly end.

Q. Now, the governor house is where?

The Master: At the extreme southerly end.

Q. The governor house is about—give me those between the two angles on Fordham Road. 28832

A. On the 181 stretch.

Q. The 181 angle stretch that you gave me a few minutes ago?

A. Yes, sir.

Q. And that extends out?

A. It extends back from the road. There is a stone stairway going down.

Q. It extends back?

A. 30 or 40 feet.

Q. And it is about how large a frontage?

A. I think the narrow end is the front; I would not be sure of that; it is 76 x 109.

Q. Now the holder is right behind? 28833

A. Yes, sir.

Q. And there is a circle of about—

A. It has a diameter of about 250 feet.

Q. Can you draw in pencil on this Exhibit 178 just about where those are?

Mr. Vilas: I object to that.

The Master: Is that the original exhibit?

Mr. Chambers: Yes, sir.

The Master: No.

The Witness: This is our working map that we plotted approximately about there (indica-

ting); there is nothing to show exactly; it may be 20 feet out of the way.

Q. On this great extent of the lot to the north of the holder there is nothing, no structures of any kind?

A. Nothing at all.

Q. And there are no structures on this angle down here at Sedgwick Road?

A. The governor house is the only structure outside of the tank.

Q. There is a lot of space in here on Sedgwick Road?

28835 A. Yes, sir.

Q. On which there are no structures?

A. Yes, sir.

Q. How many lots can you work out there?

Mr. Ransom: I think there must be some interruption to Mr. Chambers' testimony. He has been testifying continuously here.

Q. How many lots can you work out on Fordham Road?

The Master: He wants to prove that there is a considerable stretch of vacant land to the left of the holder looking south.

The Witness: It is all vacant outside of this

28836 circle.

The Master: How much vacant land is between the holder on the street where the holder stands, 50 or 60 feet or 100 feet?

The Witness: Over 100 feet at the nearest place anywhere.

The Master: Over 100 feet?

The Witness: Yes.

The Master: So that the entire Sedgwick Avenue or Fordham Road front there is vacant for 100 feet back of the street line?

The Witness: Yes.

The Master: Until it meets the outer edge of the holder?

The Witness: Yes, the governor.

The Master: The governor and holder?

The Witness: Yes, you are just about the outer edge, yes.

Q. On Harlem River Terrace, how long a stretch there?

A. Well, between here—the depth of this holder is so deep here that we figured our values on the Harlem River Terrace which is practically level with the railroad, and that is at the one value, and there we get 28838
54 lots.

The Master: On Harlem River Terrace?

The Witness: On Harlem River Terrace, about this lead pencil mark (indicating), all the way around, and figured it $800 a lot.

The Master: You began here on Fordham Road then to swing around?

The Witness: Yes.

The Master: That includes the space where the governor house is?

The Witness: Yes.

The Master: What Mr. Chambers is trying to show is how many lots there would be.

The Witness: That is 350 feet. 28839

Q. From there (indicating)?

A. Yes, sir, 350 feet. You mean on the frontage alone?

Q. Yes.

A. 350 feet is fourteen lots, taken out of 54, leaving 40 lots.

Q. Forty lots on which there is no governor house or holder on Harlem River Terrace?

A. Yes.

Q. Anything on the interior lots?

28840

The Master: Nothing on the interior lots except the holder, is there?

The Witness: That is all. The holder is interior.

The Master: We have a very good picture of things up there from other witnesses.

Mr. Chambers: That is all.

The Master: We will defer cross-examination until the morning.

Mr. Vilas: I would like to have this volume 3 of the Public Service Commission reports of the First District, Annual Report of Statistics of

28841 Light, Heat and Power Companies marked for identification.

The Master: No, it is identified by the description that you have given, you do not have to mark it.

Mr. Vilas: Well then, let the record show that the book I have just described is the book I showed to the witness Knox on the stand, concerning which he testified.

The Master: Yes.

Adjourned to Thursday, January 8, 1920, at 9:30 A. M.

28842

Last Complainant's Exhibit 411.
Last Defendants' Exhibit AA47.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 28843

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 8, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 28844
MR. O'BRIEN, of Counsel for defendant Swann.

JOHN R. PETERSON, resumed the stand.

CROSS-EXAMINATION BY MR. VILAS:

Q. Mr. Peterson, how long have you been familiar with this property up at Fordham Road that you testified about yesterday.

A. I assessed it between the years of—that is the improved property. I have been there since 1905. 28845

Q. I asked you how long you have been familiar with it?

A. I have been in the district since 1905.

Q. Have you assessed it all those years?

A. Up to 1914.

Q. You did not assess it for 1905?

A. I assessed it, I believe it was, 1905 or 1906. It was vacant up to 1911.

Q. The first year you have testified about is 1911?

A. Yes, sir.

Q. That property is a very irregularly shaped piece of property, is it not?

A. Yes, sir.

Q. And part of it fronting on Sedgwick Avenue is very much higher than the part on Harlem River Terrace, is it not?

28847 A. Yes, sir.

Q. How much higher?

A. Well, I think in my recollection it must be about a 40 foot drop there.

Q. A 40 foot drop between Sedgwick Avenue—

A. And Harlem River Terrace.

Q. Is it not greater than that, as a matter of fact?

A. I do not think so.

Q. The upper part of that is all rock, is it not?

A. The upper part?

Q. Yes.

A. No, sir.

Q. It is not rock? What is it?

28848 A. It is practically excavated below grade for building purposes, ready for building purposes. There may be rock under the dirt.

Q. Do you mean that it is excavated by human hands or by natural formation?

A. By natural ground, the natural bed there.

Q. The natural bed for residence purposes on Sedgwick Avenue?

A. Yes, sir.

Q. Is that what you want to be understood as saying?

A. Yes, sir.

Q. How deep does the slope of the property go back from Sedgwick Avenue?

A. Why, it don't run much. Not for at least 100 feet. She runs pretty nearly level.

Q. All of it?

A. Practically all of it. It is up and down.

Q. All along Sedgwick Avenue?

A. Practically.

Q. You think there is a tier of lots fronting on Sedgwick Avenue 100 feet deep?

A. Yes, sir.

Q. On a level with Sedgwick Avenue? 28850

A. Yes, sir.

Q. Is that true all the way back to the northerly end of the property?

A. It gets more shallow as it gets up near the other end.

Q. By the other end you mean what?

A. The north end.

Q. It is shallow up there?

A. Yes, sir.

Q. Do you mean by that that the drop from Sedgwick Avenue down is not so great?

A. No, I am talking about the 100 feet back from Sedgwick Avenue. 28851

Q. And the lots are 100 feet deep at that point?

A. That is, the same grade, don't run back only about half as far back.

Q. But they drop down a considerable distance there?

A. Yes.

Q. And you think that that property may be considered in a condition of excavation ready for buildings, is that it?

A. Most all of it on Sedgwick Avenue.

28852 John R. Peterson, Cross.

Q. As a matter of fact would there not have to be a very steep wall erected there before you could build a house fronting on Sedgwick Avenue?

A. Well, there may be some subconstruction there, but the subconstruction is all along Bailey Avenue and Sedgwick Avenue, even worse up north, and they have buildings there.

Q. It goes down pretty steep here, too, does it not?

A. Not until you get back beyond the building line. Then she drops off.

Q. Then it drops, does it not?

28853 A. Pretty sharp, yes.

Q. Right down to the river. It drops 100 feet, does it not?

A. No, I have not any such figure. I have a figure of about fifty feet on the north end.

Q. Do you want to go on record here as saying that the difference in level between Sedgwick Avenue and the Harlem River Terrace is no greater than fifty feet?

A. I did not survey it, but that was my judgment as regards looking at it on the premises.

Q. That is your present judgment of the drop there is in that lot?

28854 A. Yes, there is no change there.

Q. Is this upper part that you have described rock?

A. Well, I did not get under it, to dig the dirt out of it. It may be underneath, but it does not show to my knowledge anywhere, to any extent above the surface.

Q. Can't you see the rock sticking out all along there?

A. No, I would not say so. It is below grade enough whatever there is there, to get your foundation for a new building. It is excavated practically for buildings.

Q. On the Harlem River Terrace side, in the vicinity of Fordham Road where this holder was built, do you remember the property before they built on it?

A. Yes.

Q. And what was the nature of the ground down there?

A. Oh, I guess that was 30 feet below grade there.

Q. 30 feet below what?

A. The curb of Fordham Road. We call the grade the street.

Q. What was the condition of it; was it level?

A. It was irregular. 28856

Q. Was it wet or dry?

A. It was wet and dry according to the seasons.

Q. It was a swamp, was it not?

A. Well, it was. I don't know as it was, at that; it might be mucky, but I do not say it is a swamp. It is an overflow more than anything else.

Q. You said something about a flight of stairs, did you not?

A. Steps going down to the governor house.

Q. Those lead down from Fordham Road, on the upper part there, on the south end of the property, do they not?

A. They do. 28857

Q. How much of a drop is there there?

A. I should judge twenty-five or thirty feet. The governor house is built down practically on the old level.

Q. Built down on the bottom?

A. Originally.

Q. On the bottom level of the lot?

A. Yes, the level that it was.

Q. And these steps go down from the road up above. Is the governor house built close up to the slope that leads up to Fordham Road?

A. I should judge about 75 feet away from it, probably.

Q. 75 feet away from Fordham Road?

A. Fordham Road.

Q. And the space between the governor house and Fordham Road is sloped?

A. Terraced down.

Q. Did you find any other improvements on that part of the property in addition to the governor house, the holder and these stairs that you have described?

A. Not between those years, except while in the
28859 course of construction they had little shacks there for building purposes—temporary shacks, that is all.

Q. Up at the upper part, above the holder and above the governor house on the curb, where you came around Fordham Road into Sedgwick Avenue, was there anything in the way of improvements up there?

A. Fordham Road? Those are the only two improvements on the property, is the governor house and the tank.

Q. Did you find anything in the way of a retaining wall up above?

A. I do not think so.

Q. You did not see—

28860 A. (Interposing.) That retaining wall was built, I believe, when Fordham Road—the only retaining wall was built there when Fordham Road was made. Whenever they make a street on a steep grade they build a retaining wall to hold up the street.

Q. Is there a retaining wall to hold up the street?

A. There must be.

Q. You say there must be, but do you remember it?

A. I would not swear to it, but I say that naturally there must be on account of the depth, the grade.

Q. When was it built?

A. When Fordham Road, I guess, was laid out. That was before my time.

Q. Don't you remember seeing a lot of dry masonry on this lot up above the governor house?

A. Well, the retaining wall is dry masonry.

Q. Isn't there a large amount of new dry masonry retaining wall up above the governor house?

A. Well, I do not remember. They may have rebuilt it there to make it stronger, that is all. They must have torn one down to put one up, but I am not sure just now; I would not want to say so. 28862

Q. You do not remember a large amount of dry masonry on the Gas Company's property inside of the street line, I mean inside the property line, to hold up the upper part of that property?

A. They may have reinforced the retaining wall that was there. I cannot just figure it now.

Q. You do not remember now exactly?

A. I cannot remember, so I would not swear to it.

Q. If there was one there when you assessed this property you did not consider it as a part of the property for the purposes of assessing it?

A. No, not as an improvement. I valued them as lots. 28863

Q. What are these steps built of?

A. Granite.

Q. And how many approximately are there?

A. Say there is 30 feet, and there is 9 inches to a riser; that would bring it about 40 steps, I guess.

Q. How did you arrive at the valuation of the governor house as you have stated that?

A. Well, the size of the building and the height of the building.

Q. Did you arrive at it by applying a square-foot unit?

A. Yes, a square foot unit.

Q. You figured the area of the building and applied a unit to it?

A. I did.

Q. What was the unit?

A. On the height of the building it was $4.75.

Q. $4.75 on what?

A. On the height of the building.

Q. What was the height of the building?

A. I should judge about 32 feet.

Q. And how many stories did you allow for it?

28865 A. There is only one story, open building, 32 feet high.

Q. You called it a one-story building?

A. Yes, sir.

Q. You did not treat it as a two-story building?

A. I called it what I found it.

Q. Does this height of 32 feet that you give us include the basement?

A. No, we do not figure underneath; we figure from the floor to the top of the roof.

Q. From the floor to the ceiling; is that right?

A. To the roof.

By the Master:

28866 Q. You do not figure foundations at all?

A. We throw that in our factor.

Q. Just throw it in?

A. Understand me, if there is no cellar there it does not figure in our factor; if there is a cellar there it figures in our factor.

By Mr. Vilas:

Q. Was there a cellar in this building?

A. I think there was. I am not sure of that now. I do not know, I would not say that there was; I forget it right now. It does not come home to my mind just now how she did lay in the bottom of that.

Q. Don't you remember a basement under the floor of this building, with a lot of big pipes and connections in it?

The Master: What is the purpose of this cross, Mr. Vilas? Is it the purpose to show that the property is worth more than this witness has testified?

Mr. Vilas: Why, certainly, that building cost over $100,000.

The Master: Then I do not see any object in pursuing this line of cross-examination to any great extent. Mr. Peterson's duty was to the 28868
City. It was his purpose in going there to assess that property at a price or at a valuation that would be fair to the City; he was not valuing that property for the purpose of this case or for the purpose of a sale, or for the purpose of some other kind of a proceeding, he was valuing it for the purpose of taxation. For that purpose he was getting the best result he could. He was following the rules and formulae and practices of the Tax Department, and it is so with the land and the buildings and the machinery and everything else. They have a certain standard and they work upon certain standards to get what they be- 28869
lieve is the fair value upon which things will sell under ordinary circumstances; but they do not pretend to say that it is an accurate result as between other parties and other situations. They believe that it is fair so far as the taxpayer and the City are concerned, for taxing purposes, that is all.

Mr. Vilas: Quite true, but they offer this witness here and have him testify, and he testifies that he assessed this at full value, and they are offering this here not for taxation purposes or any-

thing but for the purpose of fixing the value of this property, and I want to find out what he knows about it.

The Master: But my point is that you can bring out the operation of this witness's mind and the methods pursued by him as a general line of inquiry, as indicating the difference between the basis upon which he worked and the basis upon which you are trying to work here.

Mr. Vilas: That is exactly what I am endeavoring to do.

28871 The Master: I would just like to shorten the cross-examination, that is all.

Mr. Vilas: I do not want to prolong the cross-examination unduly, but there is quite a difference in the figures. I think I am entitled to find out what he knows about this business—get the basis on which he arrives at the value of $40,000 for a building of that kind.

The Master: Just ask him and he will tell you quickly on what basis he arrived at it.

Mr. Vilas: He has told the basis that he used, and I want to find out what he knows about it.

Q. You don't know how much that building actu-

28872 ally cost, do you?

A. No, I do not, because corporations pay three times as much as anybody else for a building.

The Master: Just answer the question and we will get through quickly. I will have to strike out the statement you just made, "because corporations pay three times as much as anybody else." That is not for you to say.

Mr. Chambers: I object to striking it out.

Q. You said yesterday, didn't you, Mr. Peterson, that you talked with the superintendent and people around there?

A. People in charge, yes. I do that in every building I go to.

The Master: You get all the information you can?

The Witness: Yes, I look at the plans and everything that is there.

The Master: You go about getting any information you can from anybody you know of, so that you can conscientiously give what would apply to that as a report as to the full value under the statute, is that right?

The Witness: Yes, sir. 28874

The Master: And if you do not know about it, you go around and ask somebody else what they think about it?

The Witness: Yes.

The Master: And get your information in that way?

The Witness: Yes.

Q. Did you ask them what the cost of the building was?

A. No, I did not go into the cost of the tanks. I knew what the cost was.

Q. We are not talking about tanks, we are talking about this governor house and holder? 28875

A. No, I did not even ask if it was a contract or percentage.

Q. You did not ask anything about it?

A. No, I did not even know. I knew what it ought to cost, no matter what it did cost.

Q. You knew what it ought to cost, and you thought it ought to cost $4.75 a foot, is that it?

A. At the most. I would like to have the contract to do it at that price.

Q. Do you know whether this was done by company forces or by contractor?

A. I just told you I don't know whether it was by percentage or by the company, it would make no difference at all.

The Master: And he said it ought to be done, from his knowledge for $4.75 a foot, whether done by days' work or your own men or anybody else.

Mr. Chambers: And he said he would like to have the contract at that price.

Mr. Vilas: He has not said so.

The Witness: Yes, I would at that time, at
28877 those prices.

Q. You would contract to erect that building?

A. I would be glad to.

The Master: You don't get anywhere with that examination. When he says, "I would like to have a co tract" and you say, "You would like to have a contract," and he says, "Sure, I would like to have a contract." Where does that land you?

Mr. Chambers: It shows he is willing to erect a building.

The Master: No, it does not. It does not show anything. It is a statement he would like
28878 to have had that contract which is some seven or eight years ago, and the event is long dead.

Mr. Vilas: He is offered as a builder, let us find out how much he knows about this building.

Q. You said you were in the building business before you were a deputy commissioner?

A. Yes.

Q. How long?

A. In a sense I am building all the time.

Q. You are building now?

A. Not now, not since 1916. Anytime I could pick up any money building, I built, the selling was good.

Q. You have not done that since 1916?

A. No.

Q. But your building operations were in the Bronx?

A. Yes, mostly.

Q. And consists of dwellings?

A. Dwellings, one, two and three family houses.

Q. And garages?

A. Only one.

Q. Only one garage?

A. That was built in 1916. 28880

Q. You never built a building like this governor house?

A. No. I can build brick so much a thousand furnished, and my brick workers that was working for me will work for you.

Q. You don't know how far the foundations of this house were sunk, do you, and what they were made of?

A. I think they were in when I came along there. I was only there a few months in the summer.

Q. You don't know what weight they had to carry?

A. Well, I did not figure it out, no. I could figure it out. It was not interesting enough to figure out, and I was not to arrive at it. 28881

Q. You did not enter into the construction of the walls?

A. No, I did not have to.

Q. What materials did you use in the foundations of the houses and buildings you say you constructed?

A. The cheapest we could get, or most available for use, concrete or stone or brick.

Q. Did you ever have any construction with reinforced concrete?

A. Why, no, I can't say I had any reinforced concrete except in small lots.

Q. Do you know how much reinforced concrete costs compared with ordinary concrete not reinforced?

A. Well, I have had some patches about 50 or 60 or 70 square feet, where I had to cover certain places, and I put it in at about 40 cents or 50 cents.

Q. Reinforced concrete is more expensive?

A. This was reinforced what I am talking about.

Q. I say it is more expensive?

28883 A. Yes, a little more.

Q. Than concrete that is not reinforced?

A. A little more. It is only the little rods run through the cement, that is all.

Q. When you compute the cost of reinforced concrete, do you compute it on just a cubic foot basis?

A. We measure up everything on the square feet basis.

Q. Square feet?

A. Yes.

By the Master:

Q. Suppose the walls are two feet thick?

A. Well, we double it up.

28884 Q. On what basis do you take the square feet?

A. The material is the same, whether it is one foot or two feet.

Q. You need more material?

A. I know, but proportionate to the cost.

Q. What thickness do you figure?

A. They do not put anything in less than 20 inches.

Q. Do you figure your square feet entirely on the 20 inches, if it is thicker than that you increase your unit?

A. Yes.

Q. How thick are these walls?

A. Why, I think they were 3 feet 6, if I am not mistaken about it.

Mr. Vilas: What walls are you talking about?

The Witness: The foundation walls.

Q. Under the governor house, the governor house walls?

A. The brick walls, I thought you were talking about.

Mr. Vilas: Are you talking about brick walls now?

The Master: The governor house.

The Witness: I am not sure, but that is my impression. We did not measure it up, we glanced it over. 28886

By Mr. Vilas:

Q. When you said you figured on square feet, you were speaking of concrete, weren't you?

A. Yes.

Q. And did you measure the concrete walls by square feet and not by cubic feet?

A. Yes. If it is 10 feet high and it is 3 feet wide, ten 3's is 30.

Q. Yes.

A. Measure it by the length, and that is the way we work it. It is the same as we work the brick wall. 28887

Q. Regardless of how thick it is?

A. I gave the width, 3 feet wide.

Q. 3 feet wide and 10 feet high.

A. And then by the length.

The Master: Then you got the cubic foot content?

The Witness: I know there is a cubic foot content, but we figured by the square feet.

The Master: But you are just figuring the cubic feet instead of square feet.

28888 John R. Peterson, Cross.

The Witness: Suppose it is two feet or 18 inches, you can figure it both square or cubic feet.

Q. If the wall was 18 inches thick, it would not cost as much as a wall 20 inches thick, would it?

A. No.

Q. There would be a difference?

A. Yes.

Q. How would you allow for that?

A. Why, there is two inches more material, isn't there?

28889 Q. Yes.

A. Well, allow it, that's all.

Q. Well, how would a square-foot measurement make any allowance for that?

A. A square-foot measurement is a foot and a half wide, isn't it, that wall of 18 inches and 20 inches is a foot and eight inches wide, and I can measure a wall up on the square basis as well as any other method.

Q. It is possible we are not talking about the same thing. Now, let us suppose, so we may understand each other, that you, taking that panel back of you, there, say it is 5 feet by 4 feet.

28890 A. 20 feet surface measurement.

Q. 20 feet surface measurement. If that were a slab of concrete how would you go about determining?

A. According to the thickness of it, if it is 20 feet, one foot deep—

Q. What?

A. It is 20 feet of concrete, one foot deep.

Q. Yes, but you do allow for the depth of concrete, then?

A. My God, I am just telling you whatever the width of the wall is, we figure it.

Q. You do figure according to the width of the wall, as you call it?

A. It is one foot, we figure the width of it.

Q. You allow a different factor for a deeper wall?

A. No, I do not, not on two inches deeper, only the amount of material, that is all.

Q. You are talking about a 2-inch depth, aren't you talking about a concrete floor now?

A. No, we are talking about a wall 20 inches wide, you said what was the difference between that and 18 inches wide.

Q. Yes.

A. Is that it? 28892

Q. Yes.

A. Two inches of material and labor to put it in.

Q. And you would allow for that?

A. Why, certainly we would according to the width of the wall.

Q. Well, let us leave the governor house and go to the tank you say you found there.

A. Yes.

Q. Do you know how far below the ground the concrete tank, as you call it, extended?

A. I could not tell you just now, but pretty deep I think they went down to bed rock.

Q. Do you know how far down bed rock was? 28893

A. I was not there when that holder was started, but I saw the bowl before that went in it and I guess it must be at least 40 feet below the level of the surrounding neighborhood. I am not sure, but it strikes me looking at it now.

Q. When did you see this bowl, as you call it?

A. What?

Q. You called it a bowl, didn't you?

A. You mean the cement? The cement retaining wall for the tank?

Q. That is what you called it, bowl. Whatever you call it.

A. What do you want me to answer to?

Q. I want to know when you first saw this excavation you say was 40 feet.

A. Excavation for the wall.

Q. Start with the excavation.

A. I saw it when the cement work was partly started.

Q. The cement had been partly put in?

A. Yes, the circle had been started.

28895 Q. By cement do you mean concrete or cement?

A. That is all concrete is made out of.

Q. It is made out of some other things, too, isn't it?

A. The ingredients to put it together, yes, stone, cement, sand, water, and your reinforcing iron, that is all.

Q. Now, what I asked you was when you first saw the excavation with some of the concrete in it—

A. I think there was, as I look back, I think there was.

Q. I am asking you when you saw that?

A. That was in 1910, during the season of 1910, the latter part of the summer I believe, for the 1911 tax

28896 that that inspection was made.

Q. Was that 1911 tax reported as of the second Monday in January, 1911?

A. I think it was in October.

Q. October, 1910?

A. Yes, October 31st.

The Master: No, it was the second Monday in January, 1911.

The Witness: That year we made our change.

Q. You saw it then the latter part of 1910?

A. Yes.

Q. And then you saw it later again, sometime in 1911?

A. Yes.

Q. And when you were making the assessment for 1912, what part of 1911 did you see it?

A. The same period, throughout the same period of the year.

Q. Toward the end of the year?

A. The latter part of the summer and fall.

The Master: Well, your date shifted, you were figuring as of October 1, 1911, so you must have gone out between April and September. 28898

The Witness: We made two assessments in one year that year.

The Master: So you must have made the second in the summer.

The Witness: If it came on the second Monday of January we went out the latter part of the summer and fall.

The Master: Yes.

The Witness: If it was sworn to as of October, we went out earlier.

The Master: Well, it was sworn to October 1st that year, 1911, for 1912.

The Witness: Well, if you know the swing of dates, I don't know. 28899

The Master: Those are the dates it shifted then.

The Witness: Well, I accept the dates.

Q. How thick was this concrete foundation that you saw started down at the bottom of this excavation?

A. Why, I don't just remember, but it must have been three or four feet. I could not tell you exactly.

Q. Did you know at that time?

A. At that time I did, but that is ten years ago or eight years ago, and my notes are all rubbed out practically. We figure this stuff on paper, and sometimes we throw them one side. It was all figured out at that time.

The Master: Well, this is fully covered. What more can you get? Mr. Peterson has told you that he got there when the work was started, and he saw this work going on and was there once or twice during the summer and he saw these foundations for the tank going up, and his recollection is that it was three or four feet thick at the bottom, and he thinks it was about 3 feet 6 further up. What more can he tell you?

28901

Mr. Vilas: Your Honor, you have permitted him to testify to what that concrete foundation or tank, as he calls it, what its full value was.

The Master: Yes.

Mr. Vilas: Which is less than one-fifth of what it actually cost to put it down, and he doesn't know what is down there, and what it is made of.

The Master: How do you know he doesn't?

Mr. Vilas: I will find out, if you will let me.

The Master: Hasn't he already told you all he knows about it?

28902

Mr. Vilas: He may have told me all he knows about it, but I have not asked him about things he ought to know about.

Q. Now, was the wall of this tank the same thickness from the bottom of this foundation of this excavation clear up to the top?

A. I don't know, because you filled in as you went around.

The Master: You don't know. Just answer the question.

Q. How was the excavation made, by hand, was it excavated by hand?

A. I was not there when it was excavated.

The Master: That is your answer, you don't know.

Q. You don't know whether they had it protected in any way from water?

A. I don't know, I was not there.

Q. Was there sheet piling?

A. I don't know, I was not there.

The Master: You need not say you were not there every time. You do not know. 28904

Q. How much of the concrete foundation was reinforced concrete and how much was not reinforced?

A. Of the foundations, what portion of the foundation, you mean, or the wall or the foundation?

Q. I am speaking of this concrete wall that goes down below the ground.

The Master: Was there a foundation and then a wall on it?

The Witness: That is what I want to know. I was not there when it started but I was there when the wall came out of the ground, I was there—

The Master: You say you don't know whether there was any foundation or not? 28905

The Witness: Yes.

The Master: As I understand it, you did not see the excavation?

The Witness: No.

The Master: You did not see the bottom stones, or whatever you call them there?

The Witness: No.

The Master: You saw it come out of the ground?

The Witness: Yes.

The Master: You do not know anything below that, and if Mr. Vilas will ask you for an hour you would simply say "I don't know," you don't know anything about it, don't know how it was built, don't know whether it was sheet piled, don't know whether they had water trouble, don't know whether it is laid on bed rock, or how thick the walls are, or the footing stones, or bottom stones?

The Witness: No.

The Master: Let us start at the surface of the

28907 earth.

Q. Do you know whether the concrete foundation above the surface of the ground was reinforced or not?

A. It was reinforced anyhow, I believe, to the level of the dirt.

Q. To the level of the dirt?

A. Yes, that is where she practically finished. I think it was reinforced all the way up.

Q. How high above the ground do these foundations extend?

A. I do not think they went much above the ground.

Q. And was it—

28908 A. I think my recollection is pretty close to the ground.

Q. Made of waterproof construction?

A. What do you mean, of waterproof construction?

Q. Well, was the concrete waterproofed?

A. What do you mean by waterproofed?

Q. Exactly what I say.

A. It is only tarred over, painted over to make it waterproof.

Q. What?

A. It is only tarred over to make it waterproof.

Q. Was it?

A. I did not see tar going in. I suppose it was. It ought to have been if it was not.

Q. Now, then, what was the unit price you applied to this?

The Master: He has told us that.

The Witness: At twenty-five cents, I think it was.

Q. Twenty-five cents a foot?

A. A square foot.

The Master: For the concrete?

The Witness: For the concrete. 28910

Q. How thick?

A. A square foot.

Q. How deep?

A. I do not care what it was, whether it was a hundred feet high or twenty feet wide, it is per square foot.

Q. It does not make any difference?

A. You can make your own figure, width and height.

Q. And how many square feet?

A. You mean when I arrived at it?

Q. Yes.

A. 25 into 25,000.

Q. Where did you get the figure, did you compute the— 28911

A. Oh, I have built lots of it, that is, I have used lots of concrete, and I can put in concrete all day for that.

Q. You never built a foundation like that in your life?

A. Never lucky enough to.

Q. Never had one?

A. Never, but I saw bigger than that. I was born in the trade, worked at bricklaying all my lifetime.

The Master: Is that your trade, bricklaying?

The Witness: It is my trade.

Mr. Vilas: We understand that.

Q. Did you make any difference in the figure you applied to that because part of it was reinforced?

A. That is what I arrived at first as a figure for the value of it as far as it went.

Q. You took into consideration reinforcement of it?

A. I took into consideration the way it was, how it was built.

28913 Q. But you don't know how far down the reinforcement went, do you?

The Master: I won't allow that. He has told us that.

Mr. Chambers: I am willing that he should.

Mr. Vilas: I think it has been demonstrated he doesn't know anything about it.

The Master: Don't argue it with me. You are repeating questions which have already been asked and answered, and I won't allow it.

Mr. Chambers: I am willing to let him ask it.

Mr. O'Brien: It does not take an expert to
28914 mix up a little concrete, and Mr. Vilas ought to know how to do that himself.

Q. Did you allow anything for the cost of the excavation?

The Master: I won't allow the question.

Mr. Vilas: Exception.

Mr. Chambers: I would like to say on the record I would like to have the witness answer.

The Master: I think it is already covered.

Mr. Vilas: No, it is not.

The Master: You did not allow anything for excavation?

The Witness: No.

The Master: It is included in the 25 cents?

The Witness: It is in the tank, the holder cost.

Q. Now, Mr. Peterson, you said on page 8043 of the record that you regarded that in the assessment you made for the 1911 taxes, or I think it was 1911, if I am wrong you can correct me, that you allowed the tank as five per cent of the entire holder in arriving at the amount which you have testified to. Is that right?

A. I do not get you on that. 28916

The Master: That is correct. What I asked you on that, Mr. Peterson, I asked you whether the way you got at the value of this structure below the holder itself was by figuring that the holder complete would cost a certain sum, and that about five per cent of the work had been done, and therefore it was five per cent of the total, and you figured the same way?

The Witness: Yes.

The Master: In other words, you say whether you figured it 25 cents a square foot or whether you took five per cent of the total cost of the holder, you will get the same result? 28917

The Witness: Yes, you will get the same result.

Q. Now, I want to get your method you used in arriving at the assessment?

A. Twenty-five cents a square foot at that time.

Q. You did not use this five per cent?

A. The large figure, but it was the same thing.

Q. Well, you said yesterday that was the way you did it, and I want to get this right?

A. I never said such a thing.

The Master: Well, I asked you this question, "What I am getting at is this, Mr. Peterson: When they had gone to the extent of completing the cement foundation, you figured that it was going to be how much, fifteen million cubic feet, the tank, or gallons, or whatever it was?

"A. Ten million.

"Q. And on that basis you figured it at five cents a cubic foot?

"A. Finished?

"Q. And when they had gone on with the foundation work, you figured that was five per cent of the total work, and you figured that much for the foundation, did you? Is that the idea? Is that correct?

28919

"A. Yes, about that."

and then I said, "I will not take the testimony." And it was after that I said, "I will strike it out" that he came back and said he figured—

Mr. Vilas: He said he figured it on another basis at twenty-five cents, and that the result was the same.

Mr. O'Brien: I think you are confusing what he testified to as to the assessment made on the work in progress and the assessment made in subsequent year when the holder was completed.

28920

The Master: You are talking about a different proposition. We are talking about this concrete work on which the holder stands. What Mr. Vilas is trying to get clear, and what I would like to get clear, is this, that in this $25,000 you figured that the whole holder was going to cost so much, and about so much of the work had been done, therefore there was about this much work done already so you figured the square foot, so much a square foot. Which did you do?

The Witness: I figured so much a square foot.

Q. You figured the square foot of the foundations, you did not figure any of the balance of the holder on any such basis?

A. Not at all, I figured nothing on percentage.

Q. Now, that holder, for the assessment for 1911 and 1912, was in process of construction, wasn't it?

A. It was.

Q. Isn't it a fact that you don't assess buildings in process of construction? 28922

A. We did at that period. Any building that takes over a year we assess it in progress; any building in course of construction within the year we do not.

Q. It is a fact, though, that the city charter provides that you are not to assess buildings in process of construction?

A. Not at that time. The law came in after that, I am pretty sure. I think if you will look it up you will find it came in after that.

Mr. Vilas: That is all.

(Witness excused.)

28923

28924 James T. Judge, Direct.

JAMES T. JUDGE, recalled as a witness on behalf of the defendants, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. You are the same Mr. Judge that testified for the complainant in this case last summer or fall?

A. I am.

Q. You then stated your qualifications, I believe?

A. I did.

Q. Will you turn to Block 3236, Lot 1. Did you assess Block 3236, Lot 1, for the 1916 taxes?

28925 A. I did.

Q Did you go and look at it?

A. I did.

Q. Look the lot over?

A. I did.

Q. After looking it over what valuation did you place upon it wholly unimproved as of October 1, 1915, for the 1916 taxes?

A. Unimproved, $200,000.

Q. Was that sum, in your judgment, the sum for which that property would sell at that time wholly unimproved?

A. Yes, sir.

28926 Q. Under ordinary circumstances?

A. Yes, sir.

Q. Now, the next year, October 1, 1916, for the 1917 tax?

A. $200,000.

Q. Was that the sum for which that property would sell under ordinary circumstances, in your judgment?

A. Yes, sir.

Q. Now, October 1, 1917?

A. $200,000.

Q. Was that the sum for which the property would sell in your judgment?

A. Yes, sir.

Q. Under ordinary circumstances?

A. Yes, sir.

Q. Now, October 1, 1918?

A. $200,000.

Q. October 1, 1919?

A. That is for the 1920 assessments.

Q. Did you do that?

A. I did that, yes.

Q. Give us that?

A. $200,000. 28928

Q. Just the same?

A. Yes, sir.

By the Master:

Q. You have kept it the same all these five years?

A. Yes, sir.

Q. The units have been the same?

A. Yes, sir.

Q. So the units you testified to before apply to all these years?

A. Yes, sir.

Q. The same units?

A. Yes, sir. 28929

By Mr. Chambers:

Q. Did you give the units before?

A. Yes, sir.

Q. When you were here last summer.

A. I was here about two weeks ago.

Q. You have not been on the stand in two months?

A. November it was, that I was on the stand.

The Master: That is two months ago. He gave it all right, you can rely on that, because I remember when he testified I was wondering who was

going to buy interior lots without access to the street. You gave it $400 a lot?

The Witness: Yes, sir.

Q. Are the sums which you have given the sums for which the property would sell, unimproved?

A. Yes, sir.

Q. Under ordinary circumstances?

A. Yes, sir.

Q. At those times?

A. Yes, sir.

Q. Are those sums in your judgment the full value
28931 of that property?

A. Yes, sir.

Q. Unimproved as of those dates?

A. Yes, sir.

Q. When you visited the property in 1915, did you find on it some improvements?

A. Why, in 1915, for the 1916 assessment, I found improvements.

The Master: What improvements did you find?

The Witness: A governor house and a gas tank.

The Master: Finished?

The Witness: Finished.

28932 Q. And the other years did you find the same improvements?

A. In 1917, for the tax of 1917, yes; for the tax of 1918, they erected a building.

The Master: Describe the building.

The Witness: They erected a club house, a one and a half-story frame building, 18 by 21, with a porch around it, sort of club house for their employees, and tennis court.

Q. That is on the north end of the property?

A. Yes, sir; on the north end; and a handball court they put up there, too.

Q. Any improvements from then on, any other improvements?

A. No.

Q. Now to go back in 1915, did you assess the building there separately?

The Master: Which building?

Mr. Chambers: The governor house.

A. Yes.

Q. Separate from the contents?

28934

A. No, the contents and the building were assessed together.

The Master: What contents were there?

The Witness: Machinery in the building.

Q. What kind of machinery?

A. Why, governors and different machinery, boilers, etc.

The Master: How did you arrive at the value for the machinery?

The Witness: Why, I assessed the whole thing together at—

The Master: Don't give the value.

Mr. Chambers: I think it ought to be recorded, and then stricken out. He gave it. 28935

The Master: The stenographer didn't get it.

Mr. Chambers: I except.

The Master: What I am trying to get at is this, you had a holder, you had a governor house with all the apparatus in it to assess?

The Witness: Yes, sir.

The Master: How did you fix the value for the holder? By taking a basis—

Mr. Chambers: Now, I suggest that he say how he did it.

The Master: That is fair.

The Witness: The assessment on the holder is taken from the main office on figures given by the deputy in charge of the real estate corporation.

By the Master:

Q. How about the building exclusive of the apparatus in it?

A. The building exclusive of the apparatus in it, do you want the factors?

Q. How you arrived at a result, without giving us the results?

28937 A. By assessing so much a square foot for the ground covered.

Q. For the building?

A. For the building.

Q. Did you set aside a separate figure for that?

A. Yes, sir.

Q. Have you that figure in your mind?

A. Yes, sir.

Q. In addition to that you added the value of apparatus?

A. Yes, sir.

Q. How did you get at the result of valuing the apparatus? Have you ever bought or sold that kind

28938 of apparatus?

A. No, sir.

Q. Then how, in your work as an assessor, do you get a result which you think is fair to the City?

A. As a general proposition, after assessing other properties, boilers, etc., I figured the machinery at an approximate figure.

Q. You arrived at an approximate figure?

A. Yes, sir.

Q. That was based entirely upon what other assessments had been made of other manufacturing property, boilers and the like?

A. Yes, sir.

Q. You did not attempt to examine the machinery and figure in your mind that particular apparatus, that it would cost so much to replace, or anything of that sort?

A. No, sir.

Q. Or its condition?

A. No, sir.

Q. You simply figured that this was a governor house full of apparatus?

A. Yes, sir.

Q. And at a fair assessment would be so much?

A. Yes, sir.

28940

By Mr. Chambers:

Q. Had you ever made a study of boilers before that?

A. Never.

Q. You had assessed other boilers though in years before?

A. Yes, sir.

Q. What value did you place upon the building?

The Master: On the building I will allow him to state.

Mr. Vilas: He said he assessed it in a lump sum.

Mr. Chambers: He said he could divide it up.

28941

The Master: The figure was a lump sum, just give the figure for the building included in that lump sum.

Mr. Vilas: He didn't say that.

The Master: In arriving at a lump sum you considered a particular sum separately for the building, did you?

The Witness: Yes, sir.

The Master: What was that sum?

Mr. Vilas: I object to that.

The Master: He may give it.

Mr. Vilas: Exception.

A. $40,000.

Q. That was the October, 1915, valuation?

A. Yes.

Q. Now, what was it in 1916?

A. $40,000.

Q. In 1917?

A. $40,000.

Q. In 1918?

A. $40,000.

Q. In 1919?

A. $40,000.

28943 Q. Is that sum the sum for which, in your opinion that property would sell, the land with that improvement on it, that is, excluding the contents?

The Master: That is $200,000 for the land and $40,000 for the building, $240,000 would be the sum for which it would sell under ordinary circumstances?

The Witness: Yes, sir.

Q. As of these dates?

A. It is hard to get a market for that sort of stuff, the market would be limited.

The Master: That is your best judgment of what it was worth and would sell for?

The Witness: Yes, sir.

28944 Q. What did you assess the club house for?

A. $2,000.

Q. Beginning with the year 1917?

A. The assessment was levied in 1917 for the tax of 1918.

Q. $2,000 for the tax of 1919?

A. Yes, sir.

Q. And the tax of 1920?

A. $2,000.

Q. You looked that building over, did you?

A. Yes.

Q. And you looked over the governor house building?

The Master: Don't waste any time on that.

Q. You knew what the club house was made of?

A. Yes, sir.

Q. You knew what the governor house was made of at the time, didn't you? You looked it over and knew the materials in it?

A. Yes, sir.

Q. What kind of a structure it was and how it was built and its layout on the ground, is that right?

A. I was in the building, yes. 28946

Q. Did you value the holders in those different years?

A. I did.

Q. I am going to ask you to give the value of the holder for each one of those years as you assessed it for tax purposes?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. I am going to ask you to give the value of the governor house contents as you assessed them for each one of those years, 1915 to 1919, inclusive?

Mr. Vilas: Objected to. 28947

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you make any assessment for the tennis court?

A. No.

Q. You didn't take that into consideration?

A. No.

Q. Now, the location of the governor house and holders are all that described in your previous testimony?

A. Yes, sir.

Q. Away over on the West Fordham Road side here?

The Master: It is on the south end of t property.

The Witness: The south end of the property.

Q. There is nothing near the north end except this club house and tennis court?

A. And a handball court.

Q. Does the tennis court and club house occupy all the north end there, or is there a lot of space there?

A. A lot of space between the club house and the
28949 north end of the property.

Q. There is lots of space on the whole lot that is unoccupied, different portions of it?

A. Yes, sir.

Q. A great deal?

Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. VILAS:

Q. There is a lot of space that couldn't be occupied on that property, isn't there, except by goats?

A. That is true; yes, sir.

Q. Now, this governor house is a brick building?

A. Yes, sir.

Q. When you made your assessment the first year
28950 you were on that district there you had before you the assessment of your predecessor, Mr. Peterson?

A. I did.

Q. You considered his figure, with other factors, in arriving at the valuation?

A. Yes, sir.

Q. And as a matter of fact you did arrive at the same valuations that he did?

A. Yes, sir.

Q. And you placed upon the buildings the same valuation for each year?

A. Yes, sir.

Q. Did you use the same method that Mr. Peterson did in arriving at that valuation?

A. I arrived at that valuation from the method of procedure that we had adopted in the Tax Department for that type of building, and putting a factor on the building for the ground covered.

Q. That is, you put a multiple into the area of the ground covered by the building?

A. Yes; in other words, that would be a square, and the height of the building was taken into consideration when the factor was placed.

Q. It was regarded as a two or three-story build- 28952
ing—

A. No, the factor was for the ground covered and the height of the building, the thickness of the walls—that was considered when the factor was made.

Q. That determined the making of the factor, the multiple?

A. Yes.

Q. The height of the building, the thickness of the walls and those considerations entered into the making of the factor you multiplied by?

A. Yes, sir.

Q. Did you keep in touch during those years with the cost of building material? 28953

A. I did, yes.

Q. It is a fact, isn't it that in 1916, or 1919, at the present time, the cost of building materials has very much increased?

A. Yes. I can cite you instances of where brick has gone up 100 per cent, and yellow pine has gone up 100 per cent.

Q. And labor has gone up.

A. Yes. I can tell you now that we used to figure for an ordinary flat house $700 a front foot, about $35,000. That same house costs today to put up $1,400 a front foot, or about $70,000.

Q. And the same thing would be true with this governor house, wouldn't it?

A. To reproduce it?

Q. Yes.

A. Oh, yes, no doubt of it.

Q. You do not pretend to say that the figure you have put on this governor house represents the cost of reproducing it now?

A. No, sir.

The Master: The witness has testified that that is what it probably would sell for under ordinary circumstances, but he says you would
28955 have a hard job selling it. His basis is what it would sell for ordinarily, and the department has worked out a factor for various types of buildings to arrive at what they would ordinarily sell for, and he used that factor. You won't get any more from Mr. Judge.

Q. Did you have any part in working out this factor or did you take the factor furnished by the department?

A. We all worked together on that, the deputies and the department, we get together once a year and figure these things out.

28956 Q. Did you participate in figuring out the factor you used for this building?

A. Not that particular building.

Q. Not that particular factor?

A. No.

Q. You took the factor furnished to you by the department?

A. Yes.

By the Master:

Q. Mr Judge, do I get a correct impression that, in order to get a uniformity in results, the deputy commissioners and other men in charge of the depart-

ment have conferences with reference to various types of building and construction?

A. Yes, sir.

Q. So that all the deputies having reached a conclusion in these conferences as to the factor to be used, use that factor?

A. Yes, sir.

Q. So there is uniformity in the assessment?

A. Yes, sir.

Q. Otherwise your judgment might be higher or lower than some other man, and in some sections real estate would be assessed at a higher factor than in 28958 other sections?

A. Yes, sir.

Q. And in order to get a uniformity of results fair to all citizens holding the same type of building, you use a factor that is the result of the concensus of opinion of all the deputies in the department?

A. Yes, sir.

By Mr. Vilas:

Q. Do you know how much this building costs?

A. No, I should imagine it cost a whole lot more than it was assessed for. I imagine it cost a whole lot of money to put that foundation there. I will say though that the cost of a building, it does not 28959 necessarily follow that it is worth what it costs to construct.

Q. I am asking you if you knew what it cost to construct?

A. No.

Q. If you knew that it cost more than $100,000 to put up that building would it affect your judgment in any way as to the value?

A. For assessment purposes, no.

Q. Did you allow anything in any year in which you valued this building for depreciation on account of the age of the building?

A. Well, no. The building was practically too new to depreciate. It is only about ten years old, and that type of building—

Q. It has been kept in good condition?

A. Good condition, yes.

Q. Did you finish your answer about the depreciation of this type of building?

The Master: He did finish it.

Mr. Vilas: Let him say whether he did or not.

The Master: You finished your answer, didn't you?

28961 The Witness: I finished my answer.

Q. You were speaking about this particular type of building. This particular type of building does not depreciate much, does it?

A. I say this particular building which has been put up only ten years has not depreciated.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. The Master asked you about the concensus of opinion, of the unit, etc., in the department. You adopt that as your own, don't you?

A. We do, yes, after a conference we arrive at a certain factor that we are going to use on a certain type of building.

28962 Q. You use it as your own independent judgment then?

A. Yes.

The Master: You don't think about it any more?

The Witness: No, because we have got to do that.

The Master: You have agreed with all the men, and your judgment has been formed in conference with them and that ends it.

The Witness: Yes.

Mr. Vilas: If the Court please, I omitted at the close of Mr. Peterson's testimony to move

to strike out his testimony as to the value of the uncompleted concrete tank.

The Master: I will let it stand.

Mr. Vilas: It is clear that he doesn't know anything about it.

The Master: He testified that he was a practical mason and bricklayer, and that he could judge the value. I have got to take his testimony.

Mr. Vilas: I don't think it is worth anything.

The Master: It may not be worth much, but I will take it.

28964

Mr. Vilas: Exception.

Mr. Chambers: I would like to ask Mr. Judge another question.

By Mr. Chambers:

Q. Did I understand you to say there was some part of that property that you could not build on? You didn't say that, did you?

A. No.

Q. There isn't any part of it that could not be built on, is there, that you know of?

A. Why, you can build on any property if you want to spend enough money for foundations and footings.

28965

Q. It might be more difficult to build on some of it.

A. That is right.

Q. But there isn't any of it that you know of that you couldn't build on if you met those difficulties?

A. No.

By Mr. Vilas:

Q. It would be pretty costly to erect a dwelling house or any building on certain portions of that lot, wouldn't it?

Mr. O'Brien: Washington Heights is dotted with that kind of stuff, Mr. Vilas. You take a trip up there.

Mr. Vilas: Let the witness answer the question.

A. On some portions of it, yes. On other portions it would be very practical to put up apartment houses.

Q. Can you tell us what the difference is in the grade between Sedgwick Avenue and Harlem River Terrace, approximately?

The Master: We have got that in the record.

Mr. Vilas: We haven't got it right.

The Master: We haven't got it right?

28967 Mr. Vilas: No.

A. It varies. I should say it runs all the way from maybe 30 feet to in some places as much as 100 feet.

Q. It is as much as 100 feet in some places there, isn't it?

A. Yes, sir.

HERMAN J. LEVY, recalled as a witness by the defendant Newton, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

28968 Q. You are the same Mr. Levy who testified in this case last fall or summer?

A. I think it was in December or November, wasn't it?

Q. Whenever you testified?

A. Yes, I did.

Q. You are the same man?

A. Yes, I previously testified in the case.

Q. And you gave your qualifications, as I remember, then?

A. Yes, sir.

Q. Mr. Levy, when you testified before and gave your qualifications you only covered land. How many

years have you been assessing or valuing buildings for the department?

A. Nine years.

Q. Various types of buildings?

A. Yes, sir.

Q. And covering practically the whole of Manhattan?

A. Several districts, both in Manhattan and Brooklyn.

By the Master:

Q. Tell us about these conferences that Mr. Judge told us about. When do they occur? 28970

A. Oh, from time to time during the year.

Q. Is there anything more to be said than Mr. Judge said about the conferences, in arriving at certain units for certain types of buildings?

A. Why, there is a uniformity of factors adopted by the Board of Tax Commissioners.

Q. As the result of these conferences?

A. Yes, and they are given to the deputies, who use them wherever in their judgment they apply.

Q. In other words, take a tenement house comparatively new, you have got a certain factor for that, is that right?

A. Yes.

Q. And a fireproof tenement house, practically new, you have a factor for that? 28971

A. Yes, sir.

Q. The old tenement houses, you have a new condition, a new factor?

A. We have a new factor and it is for the deputy to use his judgment in applying that where he thinks it is necessary, either in full or allowing for depreciation.

Q. So, as to uniformity, there is a basic factor used all over the City; is that correct?

A. Yes, sir.

Q. And it depends entirely and only on the judgment exercised by the deputy who goes around as to how near new the building is?

Mr. O'Brien: I object to that.

Mr. Chambers: I object to it.

A. Not at all.

By Mr. Chambers:

Q. That is not so, is it, Mr. Levy?

A. Not at all. It is the deputy's duty in going around to determine the land value and so forth by the sales and, secondly, the building factor, to see

28973 what building factor would apply to it. A man not in possession of a sufficient knowledge would not know whether to put a two dollar factor on it or a four dollar factor.

By the Master:

Q. Give me some illustration of those factors.

A. Give you some illustration?

Q. Yes.

A. I happen to have a memorandum which was suggested in 1912 by me to the Board of Tax Commissioners when we were asked to give some factors at that time for the board to act upon and make up some new factors. I think I have them here.

28974 Q. Give us a few of them; give us an idea of what the factors are.

A. Five and six-story buildings of the common type, on inside lots, $1.00 to $1.50.

Mr. Vilas: This is something of your own, Mr. Levy?

The Witness: This was a suggestion made to the board.

By Mr. Chambers:

Q. By you?

A. By me personally.

The Master: That is just illustrative of the situation, that is all.

Mr. Vilas: Yes.

By the Master:

Q. As I understand it, all of these gentlemen every once in a while, every year or more or less, I do not know what it is, have these conferences and they all suggest ideas, as Mr. Levy has here, and then as a result of this conference they arrive at a certain factor or range, whatever it is. Give us another illustration of another type of building.

A. Six-story elevator apartment, inside building, $1.75 to $1.90 a square foot. These are the old type buildings. Six and seven-story building, corner, $1.90 28976
to $2.20.

Q. That will do as an illustration of what I want. As a result of these conferences the Board established a range in the price you suggested, not necessarily your figures, but they say on an old type tenement $1.50 to $1.60, or something of that sort, for an inside building.

A. We have certain factors that they give to a deputy, who uses his judgment in applying them.

Mr. O'Brien: In fact that is the way this Schedule S is used—not to bind their judgment, but is used as a basis or guide.

The Master: I understand it perfectly.

By Mr. Chambers: 28977

Q. You do not have to follow this suggestion made by the department at all unless you want to, do you?

A. No, sir.

Mr. O'Brien: Your Honor knows the common basis for objections to assessments is that property similarly located has not got the same assessment. Sometimes one man's district abuts on another man's district and there is need for communication and conference as to the basic conditions.

The Master: I think that this plan that they apparently followed in the Tax Department, looking at it as a whole, is a pretty fair plan for taxing purposes. There is not any criticism of it. There must be some uniformity, and when these men have a conference they set as a result of their experience a figure of $1.50 for a certain type of building—assuming always the deputies use their intelligence and know that is the building they are talking about. It is a pretty fair way of doing it. So that, whether it is in
28079 the lower end of Manhattan or the upper end of the Bronx, on that type of building, assuming always that the deputies do not go wrong as to the type or as to the class, the same result is attained.

The Witness: Another consideration that we must take into account is whether there is an adequate improvement on it. You may have a five-dollar building on a piece of land and it would not be worth two dollars when it is added to the value of that land.

By the Master:

Q. Putting it this way, if the conditions are the
28080 same and the character of building is the same, the purpose of the department is to get the same result all over the City?

A. To give an equalization of the assessment at all points.

Q. That is all there is to it. We understand perfectly. So far as holders are concerned—we might as well get to that—the result of these conferences is that as the basis of calculation the cubic contents are taken; is that so?

A. Yes, sir.

Q. At so much a foot?

A. Yes, sir.

Q. As the result of these conferences and the experience of the men, and the information they get, you figure it that way?

A. Yes, sir.

Q. How about apparatus and machinery?

A. On the daily capacity of the apparatus.

Q. In other words, there is the factor there based upon the daily capacity of the apparatus; is that the idea?

A. Exactly; yes, sir.

Q. In gas works you have one factor?

A. Well, I am speaking now of gas works.

Q. How about other works? Do you have a different factor? 28982

A. Oh, yes. If it is electrical machinery we charge so much per kilowatt, for the transformers, etc.

Q. In other words, the department has established a uniform scale of factors, or a number of factors, so that for gas works they use a factor based on the capacity of the works or machinery?

A. Yes, sir.

By Mr. Chambers:

Q. Well, it is from a certain amount to a certain amount, is it not?

A. No, when it comes to gas works it is whether it is a water gas or coal gas or cyanogen plant. There are three kinds. 28983

By the Master:

Q. You have fixed factors that you use?

A. Yes.

By Mr. Chambers:

Q. Those are flexible, they are from some sum to some sum, are they not?

A. Do you mean as to the capacity of the plant?

Q. The factors that you use.

The Master: No, the factor. Take the holder.

Mr. Chambers: The guide used by the department.

By the Master:

Q. Is it five cents or five to seven cents?

A. Well, five to seven cents, depending upon the age of the holder. Naturally there is a question of judgment as to its value.

Q. Take machinery, is there a range there of one figure to another, or is it a flat figure based upon the capacity of the machinery or the output?

A. Why, there is a flat figure for the capacity of
28985 a certain amount for the different types of machinery.

Q. I think at last we have gotten a very clear picture of how these assessments are made. So far as the land values are concerned, you get the best information you can and you use your judgment in establishing the unit values; is that correct?

A. Yes, sir.

Q. So far as the buildings are concerned, the result of these conferences is that certain types of buildings have certain units figured on the area covered?

A. The area of the ground covered on a square foot basis.

Q. Yes.

28986 By Mr. Chambers:

Q. As to those buildings you use that or not just as you see fit?

A. Just as we see fit.

The Master: Well, we understand that.

Mr. Chambers: Well, that is a fact; they apply their judgment.

Mr. Vilas: I object to counsel testifying.

The Master: When you say, "as they see fit," you mean from whatever angle they apply these factors?

Mr. Chambers: Only by way of guidance and assistance, is it not?

Mr. Vilas: Let us have the testimony of the witness.

The Master: No, it is not that at all. Do not let us confuse the record. We want the fact.

Mr. O'Brien: That is what we want—the fact.

Q. Those factors are only by way of guide and assistance?

A. Those factors are furnished to the deputies by way of a guide and assistance, to aid in an equalized assessment throughout the City. 28988

Q. And there is a leeway from a certain sum to a certain sum—there is a leeway there?

A. These factors would mean nothing to the deputy if the deputy did not know how to use his judgment in applying them.

By the Master:

Q. But once the deputy believes that the building comes within a certain class—

A. If he thinks it is a $5 a square foot building, then he puts $5 a square foot on it.

By Mr. Chambers:

Q. Are those factors correct and right in your judgment? 28989

Mr. Vilas: I object to that.

The Master: No, I will not take that. Sustained.

Q. Did you adopt the factors that you applied to your building?

The Master: What do you mean?

Mr. Chambers: As correct?

Mr. Vilas: I object to that.

A. Well, they are only given to us as a guide; they are not binding upon us.

The Master: We understand perfectly the basis upon which Mr. Levy approached these various problems.

Mr. Chambers: I know, but the whole trend of the Master's examination would tend to show that they used these factors and did not use their independent judgment, which is not the case at all.

The Master: Is that the impression it makes on your mind?

Mr. Chambers: It is perfectly proper for the
28991 department to aid these men by giving them this information, but, as Mr. Levy says, they are not bound by it, they use their own judgment finally.

The Master: All right, we understand perfectly the basis upon which Mr. Levy approached it. I shall draw my own inference and I shall make my own findings in accordance with what I believe the fact to be. There is no purpose gained in examining Mr. Levy any further. Ask him the value of the land and I will take it.

Q. How long were you in the Tenement House Department, Mr. Levy?

28992 A. Two years.

Q. In what capacity?

A. Chief inspector of tenements of the City of New York.

Q. What did you have to do as chief inspector of tenements?

A. I had to supervise the construction of tenements.

Q. Throughout the City?

A. Throughout the City, and the sanitary conditions of the buildings.

Q. Did you pass upon plans?

A. At times; yes, sir.

Q. Of the buildings?

A. Of the buildings.

The Master: What kind of plans?

The Witness: Old and new.

Q. Did you make visits to the neighborhoods of the City called tenement house districts?

A. Every section of the City.

Q. And examined the tenement houses?

A. Yes, sir.

The Master: Mr. Chambers, I will assume Mr. Levy is perfectly competent to testify as to the value of the building from his own judgment and knowledge. But the fact is, and I shall so find based upon Mr. Levy's testimony here, that as the result of these conferences his judgment may or may not have been taken for a particular type of building. To illustrate, he had recommendations there—I have forgotten the figures because they were not important—but we will assume in the conference Mr. Levy suggested for a particular type of building it ought to be $1.50. As the result of this conference the board or the department determined that it should be $1.40. When he struck that particular type of building and he felt and believed that the building was within the $1.40 class he would make it $1.40. Would you? 28994 28995

The Witness: Why, there is where we come in.

The Master: Just answer that.

The Witness: Now, let me answer in my own way, your Honor.

Mr. O'Brien: Just a minute, your Honor. Let him breathe; you are leading him.

The Witness: When we place these factors —or rather these factors are handed to us by

the department, it is always considered that it is a special type of building and a special sort of construction. When you come to a building of that kind and you see the building, for instance—

The Master: Now, I am going to stop you; you are not answering my question at all.

The Witness: Yes, I am.

The Master: No, you are not.

Mr. Chambers: I suggest that Mr. Levy have the floor and answer.

28997 The Master: He is going to answer my question, and he is not going to answer something else.

The Witness: I want to show you how we apply the factor; that is what you want, isn't it?

By the Master:

Q. You are going to answer my way.

A. I am going to answer the way your question calls for.

Q. Have you ever had the west side apartment house section?

A. No, I had the Fifth Avenue section.

28998 Q. Have you had the Harlem tenement section at all?

A. Yes, sir.

Q. You know those walk-up tenements on 123rd Street, around Eighth Avenue and Seventh Avenue —around there?

A. Yes, I know any part of the City.

Q. Take those at 122nd Street, there are walk-ups, I think, cold water flats?

A. 122nd Street.

Q. Between Seventh and Eighth Avenues?

A. Yes, I know it very well. The south side.

Q. Not the south side, the north side.

A. Yes. Well, there are some houses on the south side, too.

Q. That is a particular type of tenement house, is it not?

A. Yes, sir.

Q. What class does that come within?

A. That is the unimproved cold water four-story tenement; if we figured it was in good condition, 90 cents.

Q. That is in the ninety-cent class; is that right?

A. That is in a good sanitary condition. 29000

Q. In the ninety-cent class?

A. Yes.

Q. What I am trying to get at is this: If in a conference of deputies it was your judgment that that building ought to be in the $1 class and the result of that conference was to decide that it ought to be in the ninety-cent class—do you follow me?

A. Yes.

Q. And you found a building which if they had taken your judgment would be in the $1 class, but which under the result of the conference would be in the ninety-cent class, you would make it a ninety-cent building, would you not?

A. No, sir; I would make it a dollar building if I thought it was that. That is only a guide or a basic condition to start with, to go above or below that as a basis. If I put that $1 on it and a man came in— 29001

The Master: Go on and ask your questions.

By Mr. Chambers:

Q. Have you had any other experience in—

The Master: The question is not allowed. We have had enough of Mr. Levy's past experience. I tell you he knows about the value of the buildings and he knows all about the buildings.

Mr. O'Brien: Your Honor seems a little disappointed.

The Master: No, I am not disappointed; I am provoked because Mr. Levy is ducking.

The Witness: I want to make the position of the deputy clear. You want to understand it, don't you?

The Master: You want to make the position more important that it is.

Mr. Chambers: You won't allow me to ask him any more questions about this?

29003 The Master: Ask him the value of the building. I say he is qualified to value the building, and I so hold.

Mr. Chambers: I want to carry him over his experience.

The Master: He knows all about it—a man who has been in charge of the department and has been a building inspector, he knows all about buildings.

Mr. O'Brien: I want to know any man who knows more about buildings and property in New York than this man.

The Master: He knows all about them; I so hold.

29004 Mr. O'Brien: But there is a lurking idea in your mind that they are bound by some factors that the board adopted.

The Master: I am not going to argue with you.

Mr. O'Brien: I know, but the record ought to be straight.

Q. I want to ask you if you have any other experience on buildings other than you have already testified to?

A. Yes, sir.

Q. In what capacity?

A. I was ten years superintendent of building construction with Weil & Mayer, and since 1902 I have been in the building business myself in Manhattan, Brooklyn and the Bronx, building different types of buildings.

The Master: Then maybe this is a fair question, Mr. Levy—well, I won't ask it. Go ahead, I do not want you to talk about the other deputies; I will ask one of the others. Your peculiar knowledge would probably do things different from the way the other deputies would do them. 29006

The Witness: That is unkind to the other deputies.

The Master: That is why I withdraw the question. I did not want you to answer that.

Q. Mr. Levy, during this period you just mentioned—

Mr. O'Brien: Your Honor, I want to say right there I hope you are not going to lay stress upon the lack of facility of speech that some witnesses may have had.

The Master: No. But I am satisfied, Mr. O'Brien, the average inspector, the average deputy rather, appraises the property that he does appraise upon the factors furnished him by the department, using his judgment as to whether the particular building or structure comes within a certain class. 29007

Mr. Chambers: You mean he acts like a rubber stamp?

The Master: No, he is more than a rubber stamp.

Mr. Chambers: I do not agree with you at all.

The Master: He has got to determine whether the building comes within the factor that has been made.

Mr. Chambers: Then he stands on the units.

The Master: Yes, that is what I will find as a fact.

Mr. Chambers: I do not agree with you at all.

The Witness: That is not so, your Honor. That is only a basic principle to work with.

The Master: I am responsible for my finding that and deciding the facts in the case.

29009

Mr. O'Brien: You are talking about buildings, your Honor when you make that statement?

The Master: Of what?

Mr. O'Brien: Of buildings.

The Master: I have ruled out machinery and holders because of that fact. I did not think it went as far as buildings but apparently it goes as far as buildings.

Mr. O'Brien: I meant you are not applying your finding now to land.

The Master: No and I am not applying it to buildings as to all the witnesses; it depends upon the particular witnesses. Go ahead.

29010

Q. Mr. Levy, during this period you have just mentioned a little while ago did you become acquainted with the prices of construction of buildings different types?

A. Yes sir.

The Master: He must have with the work he was doing. Go on now.

Mr. Chambers: Well I cannot go so fast as your Honor will have me.

The Master: Mr. Vilas concedes he is qualified to testify to the value of buildings.

Mr. Chambers: Does he?

Mr. Vilas: I have not conceded any such thing.

Mr. Chambers: I will take the concession.

Mr. Vilas: That concession is made by the Master. I do not make any such concession. We offered this witness—

The Master: If I were trying the case for the company I would not hesitate about it.

Q. Have you kept track of the values of buildings?

A. Yes sir.

Q. For many years back?

A. Yes sir. The land and buildings I presume you mean. 29012

Q. And have you kept track of prices of building materials and all that during these years as best you could?

A. Much to my sorrow in the last year.

By the Master:

Q. How many gas plants do you know that have been sold in the last year?

A. I have not noticed any that have been sold.

Q. How many gas apparatus stations have you noticed that were bought and sold?

A. None. The only line we could get on that would be by the leases made by one company to the other but we cannot count the leases as good evidence of value. 29013

By Mr. Chambers:

Q. You do not see any evidence of the sale of gas plants because they are so good they do not sell them?

A. Usually they hold it because of its income value. If you cannot get the sales the leases are the next best things to form a value on.

Q. Block 870, Lot 60 for taxes of 1915 Mr. Levy.

Mr. Vilas: Are you asking for a value?

Mr. Chambers: Not yet no. I am trying to find out if he assessed it for the 1915 taxes.

A. Yes sir I assessed that for the 1915 taxes.

Q. Your valuation is as of October 1, 1914?

A. Yes sir.

Q. Did you visit that lot, Mr. Levy, at that time, before you made that assessment?

A. Yes, sir.

By the Master:

Q. You visited all these lots at all of these various
29015 periods at which you made the assessments, did you not?

A. Yes, sir.

Q. So we do not have to repeat that question as to each lot each time?

A. We have to visit each piece of property each year; and we have to swear to it in the record, that we have made that examination.

By Mr. Chambers:

Q. So when you speak of any lot here you visited it?

A. At least once.

Q. What was the frontage of that?

29016 A. Lot 60?

Q. Yes.

A. That lot is shown here in the field book as 84 feet by 297 feet 6 inches. I think at that time that lot was merged with some other lots.

Q. I want to find out what lots it was merged with. With what lots was it merged, if you can find out?

A. It was merged in 1914. Lot 60 was a 25 foot lot and was merged with lots 59, 56, 55, 53, 50, 49 and 48.

Q. It was 84 feet on Irving Place by how much on 15th Street?

A. 297 feet 6 inches.

Q. And you placed a valuation upon that as of October 1, 1914, in what amount?

A. My land value, tentative at that time, was $500,000.

Q. What finally was the valuation that you placed upon it?

A. It was fixed by the board on the land at $450,000.

Q. Your valuation was how much?

A. $500,000.

Q. And the board fixed it at a little lower amount?

A. Yes, sir; I had twenty per cent plottage on and 29018
they reduced it to ten per cent.

Q. And the amount of valuation that you placed upon it, was that in your judgment the sum for which that land would sell if wholly unimproved on October 1, 1914?

A. Yes, sir.

The Master: Ask that same general question as to all of the figures that he gives, so you do not have to repeat that every time. Mr. Levy, as to all of these figures that you give here of the value fixed by you on land improved and unimproved, is it in your judgment the value or amount that it would sell for under ordinary circum- 29019
stances, unimproved and improved as stated?

The Witness: Yes, sir.

The Master: You do not have to repeat that as to every year and every lot.

Mr. Chambers: That question ought to come, perhaps, afterwards, at the end.

The Master: Then I will let it go to the end and repeat it afterwards.

Q. The next year, Mr. Levy, was Lot 60 the same size, as in 1914?

A. Well, I did not assess it for the following year, you know. I only had one year.

Q. That is all, that one year?

A. Yes.

Q. Lots 48 and 49, you assessed those for 1914 and 1915 assessments in this Lot 60?

A. Yes, sir.

Q. What improvements did you find on Lot 60 on October 1, 1914?

A. I found a nineteen-story building; fireproof.

Q. And did you place a value upon that?

A. Yes, sir.

Q. And did you examine that and look at it?

29021 A. Yes, sir.

Q. Did you know how it was built and how it was constructed at the time?

A. Yes, sir.

Q. And as the result of your examination of it and your visit there, did you place a valuation upon it as of October 1, 1914?

A. Yes, sir.

Q. What value did you place upon that building?

Mr. Vilas: That is objected to on the ground—

The Master: Overruled.

Mr. Vilas: Exception.

A. The building value?

29022 Q. Yes, on Lot 60.

A. $2,850,000.

Q. And was that the value or sum for which in your judgment that lot with that improvement on it would sell, on that date, under ordinary circumstances?

The Master: No, you have got to add to that the land value.

Mr. Chambers: Including the land value.

The Master: What was your total value improved?

The Witness: $3,345,000.

29023

Q. Was that the sum for which it would sell under ordinary circumstances with those improvements on, as of that date, in your judgment?

A. Yes, sir; that was my judgment and the tentative assessment which was afterwards corrected by the board. But that was my value.

Q. I am sticking to your value.

A. Yes, sir.

Q. Was that in your judgment the full value of that property, unimproved and improved?

A. Yes, sir. It was the full value, but not the full cost.

29024

Q. Block 1670, Lot 1, occupies the entire block?

A. It does, yes, sir.

Q. It is 650 feet on 99th Street and the same on 98th Street, is it not—East 99th and East 98th Streets?

A. Yes, sir, 201 feet 10 inches on each avenue.

Q. On Second Avenue and First Avenue. Did you value that in 1911 for the 1912 assessment or 1912 taxes?

A. Yes, sir.

Q. What valuation did you place upon that lot wholly unimproved for the 1912 taxes?

A. The value of the land for 1912, was $475,000.

29025

Q. And 1913?

A. $525,000.

Q. And 1914?

A. $525,000. I will have to get another book for that.

Q. What are you doing now, jumping to some other one?

A. The 1914.

Q. You did not give 1914, Mr. Levy?

A. No, we are looking for the field book. Take up the years following and I will find that.

The Master: Take up the other lots, Mr. Chambers.

The Witness: 1912 and 1913, I can give you out of this book. Then you can go to the other.

Q. What improvements were there on this Block 1670, Lot 1?

The Master: For what year, 1912?

Mr. Chambers: October 1, 1911, for the 1912 assessment.

A. 1912, for the land, was $475,000.

Mr. Vilas: Do not give the figures, Mr. Levy:

29027 give what the improvements were.

The Witness: You do not want figures, do you?

Mr. Vilas: I want a chance to object.

Q. Describe the improvements first and then I want to have the figures.

Mr. Vilas: I move to strike out the answer of the witness.

A. A complete five and a half million cubic foot daily capacity water gas plant, with several holders.

Q. Can you give me the buildings as of October 1, 1911?

A. Yes, sir.

29028 Q. Everything that was on there that you have or that you valued.

Mr. Ransom: Did he give a figure for the value?

The Witness: No.

The Master: He started to say land value $475,000 and he was proceeding to give the others.

A. There was a governor house, power house, carpenter shop, purifying house, meter house, photometer, condenser and scrubber house, generator and boiler house, water power house, engine and exhaust and blower house.

Q. This is October 1, 1911?

A. Yes, sir, and a retort house, tar separating system and oil pump house, concrete mixer.

Q. Did you value these buildings separate from the machinery in them?

A. Yes, sir.

Q. Can you give me the figures on the buildings, the values that you gave on the buildings?

A. Yes, sir.

Mr. Ransom: I object to it. Many of these buildings are of a special kind; there is a retort house, a tar separator— 29030

The Master: Do not read them off. I will take Mr. Levy's statement as to what he figured those buildings without apparatus and machinery were worth.

Mr. Ransom: Exception.

The Witness: The figures I placed on them for the assessment of that year, the total amount on all these buildings—

The Master: Just the buildings.

The Witness: Do you want what was on each individual building, or the total?

The Master: Not unless Judge Ransom wants it. 29031

Mr. Ransom: Yes, give each building.

Mr. Chambers: All right.

The Witness: There was one building there, I guess that is the retort house, 275 by 60, $16,500; another building 65 by 70, 48—

Mr. Ransom: Can you tell what the different buildings are?

The Witness: Not from this memorandum. I will have to dig through all those things there to get it (indicating books).

Mr. Ransom: Give what you have.

By the Master:

Q. To interrupt you, these buildings I assume you figured on a certain square foot area occupied, did you not?

A. Yes, sir.

Q. It did not make any difference whether one building was a retort house and the other was a purifier?

A. The buildings in this instance are simply figured at what the structural value of them was.

Q. And it is immaterial what their use was?

29033 A. That is right. The construction value of these buildings, simply the brick work in them.

Q. Just give us the total then?

A. Total, $50,000.

By Mr. Chambers:

Q. For all the buildings?

A. Yes.

The Master: You see, Judge Ransom, you get nowhere with cross-examination as to those.

The Master: How about 1912, for the buildings?

The Witness: The same amount for 1912.

Q. And in 1913?

29034 A. The same for all years, I think, until 1919, and then they were placed at a value of $100,000.

Q. These sums that you have just given for these three years, are those the sums for which that property in your judgment would sell, added to the land value there?

A. Plus the machinery?

Q. No, leave out the machinery. Are those the sums for which that property would sell under ordinary circumstances, with those improvements on it, excluding the others?

Mr. Ransom: Objected to. He said it included holders.

The Witness: No, not the buildings.

Mr. Ransom: No tanks?

The Witness: The buildings did not include holders.

Mr. Chambers: Please do not interrupt; I am asking him these questions.

Q. Are those sums which you have given, plus the land value, the sums for which that property would sell under ordinary circumstances, with those improvements on it, excluding anything else you have not yet 29036
testified to?

The Master: Including the buildings.

A. No, I would not say they would sell for that without the other use to which they were put.

Q. With the use they were put to?

A. Exactly, with the use they were put to they would be worth that much added value to the land.

Q. What about the machinery? You valued the machinery there?

A. Yes, sir.

Q. What else? Were there any holders?

A. Yes, sir.

Q. How many holders? 29037

A. You want the capacity?

Q. Yes.

A. Two 600,000, one 300,000 and one 100,000.

Q. And you placed a value upon those?

A. Yes, sir.

Q. What value did you place upon those holders as of October 1, 1911?

Mr. Ransom: Objected to.

The Master: Sustained.

Mr. Chambers: Exception.

Q. Are you able to state what was the value for those holders for 1911, 1912 and 1913?

Mr. Ransom: Objected to.

The Master: Sustained.

Mr. Chambers: Exception.

Q. Now, the machinery, Mr. Levy; did you value the machinery in the buildings?

A. Yes, sir.

Q. Did you look it over before you placed a valuation upon it?

A. The papers here show I did.

29039 Q. And you listed it all up separately?

A. Yes, sir.

Q. Then you valued it?

A. Yes, sir.

Q. What value did you place upon the machinery in the buildings as of October 1, 1911?

Mr. Ransom: Objected to.

The Master: Sustained.

Mr. Chambers: Exception.

Q. 1912?

Mr. Ransom: Same objection.

The Master: Same ruling.

Q. 1913?

29040 Mr. Ransom: Same objection.

The Master: Same ruling.

Q. Are you able to state what was the value of the machinery in those buildings for those years?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception. Three exceptions.

Q. Have you found the 1914 book?

A. No, the 1919.

Q. The 1919. Was that for the 1919 taxes?

A. 1919 taxes, made in 1918.

Q. Now, the value you placed upon the lot wholly unimproved?

A. $630,000.

Q. That is the sum, is it, for which, in your opinion, that land would sell under ordinary circumstances as of that date, wholly unimproved?

A. Yes, sir.

Q. Did you find the same improvements thereon as in the other years you have been testifying to?

A. Yes, sir.

Q. What value did you place upon all the buildings?

A. $100,000. 29042

Q. For that year?

A. Yes, sir.

Q. Is that the sum, taking into consideration the use to which the buildings were put, for which that land and those buildings would sell, taking the value of the land and the building together?

A. Yes, for that purpose.

Q. Is the land value plus the value of the building which you have given the full value of that property in your judgment?

A. For that use, yes, sir.

Q. If the buildings were used for other purposes than the purpose for which you found them used there, 29043 would they sell for as much in your judgment?

A. They would not be worth any more than old brick, less the cost of taking them down.

Q. Because of their use you took that into consideration, and you found them much more valuable than they would have been if not used for that purpose?

A. I would not say much more valuable. When we assess a piece of property we assess it as is.

Q. You haven't found it for 1914?

The Master: You haven't asked about apparatus and holders for that year.

29044 Herman J. Levy, Direct.

Q. In 1919, the holders were there?

A. Yes, sir.

Q. Did you place a valuation upon the holders?

A. Yes, sir.

Q. What value did you place upon the holders?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of the holders?

Mr. Ransom: Objected to.

29045 The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you value the machinery in the buildings for that same time?

A. Yes, sir.

Q. Did you look the machinery over?

A. Yes, sir.

Q. Did you list it all up separately?

A. Yes, sir.

Q. And then valued it?

A. Yes, sir.

Q. Are you able to say what was the value of the machinery as of that date?

29046 Mr. Ransom: I make the same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. What value did you place upon the machinery as of that date?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, Block 1682, Lot 8, as of October 1, 1911, for the 1912 taxes. You assessed that lot?

A. Yes, sir, $12,000.

Q. That is a little triangular lot, 73 feet 5 inches on East 110th Street?

A. Yes, sir.

Q. In 1912, what valuation did you place on it?

A. $12,000.

Q. 1913?

A. $10,500.

Q. 1914?

A. That is the one that is missing.

Q. You lowered the value there?

A. Yes, sir.

Q. Why was that? 29048

A. General depreciation in real estate in the locality.

Q. There were no improvements on that lot?

A. No, sir.

Q. The sums which you have just given, were those the sums for which that lot would sell under ordinary circumstances?

A. Yes, sir.

Q. At those times, in your judgment?

A. Yes, sir.

Q. Was it the full value of the lot in your judgment?

A. Yes, sir. 29049

Q. Now, Block 1682, Lot 11?

A. The value of the land?

Q. Yes.

A. $360,000.

Q. That is for October 1, 1911?

A. October 1, 1911.

Q. Now, 1912?

A. The same.

Q. Now, 1913?

A. The same.

Q. That is wholly unimproved?

A. Yes, sir.

Q. Now, what was the size of that lot, 475 feet on East 111th Street, 201 feet 10 inches on First Avenue, and 401 feet 7 inches on 110th Street?

A. Yes, sir.

Q. From the rear there a little triangle was taken off?

A. A triangle which made up Lot 8.

Q. Were there any improvements on this block?

A. Yes, sir, gas holders.

29051 Q. I haven't asked you, the sums which you have given for Lot 11 in 1911, 1912 and 1913, were they the sums for which that lot would sell under ordinary circumstances if wholly unimproved?

A. Yes, sir.

Q. In your judgment?

A. Yes, sir.

Q. Was it the full value of the lot in your judgment?

A. Yes, sir.

Q. There were gas holders on the property?

A. Two 5,000,000 capacity gas holders.

Q. Any other improvements?

29052 A. Just valve houses there used in connection with the gas holders.

Q. Did you value the valve houses separately?

A. Yes, sir.

The Master: The buildings?

The Witness: Buildings and machinery in them.

Q. Can you give me the separate value for the buildings without the machinery?

A. Yes, sir, $15,000 for the buildings.

Q. That is for 1912?

A. The same.

Q. 1913?

A. The same.

Q. Now, those sums which you have just given, plus the value that you have given for the land, : those the sums for which in your judgment the lot with those improvements on it would sell at those times under ordinary circumstances?

A. For the use of the building.

Q. Taking into consideration the use to which it was put?

A. Yes, sir.

Q. As a building standing there alone, the valve 29054
house, you would not give it that value if you did not take into consideration the use to which it was put?

A. No, sir.

Q. Now, you haven't got 1914, for that?

Mr. Ransom: How about 1913?

The Witness: 1913 is the same.

Q. What value did you place upon the gas holders for each of those years?

Mr. Ransom: I make the same objection as previously.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Are you able to say what the value of those gas 29055
holders was for 1911, 1912, 1913 and 1914?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, 1919, on Lots 8 and 11, the value for the lots unimproved. Give me Lot 8 first, wholly unimproved?

A. $10,000.

Q. Were there any improvements on it that year?

A. No improvements.

Q. Now, Lot 11?

A. $445,000 for the land.

29056 Herman J. Levy, Direct.

Q. That is for the 1919 assessment?

A. Yes, sir.

Q. The value as of October 1, 1918?

A. Yes, sir.

Q. Now, the value that you have given for Lot 8, and the value for Lot 11, Block 1682, are those the sums for which those parcels would sell in your judgment wholly unimproved?

A. Yes, sir.

Q. Under ordinary circumstances at those times?

A. Yes, sir.

29057 Q. And those are the full values?

A. Yes, sir.

Q. Now, were there buildings on Lot 11 for that same period?

A. Yes, sir.

Q. What value did you place on the building on Lot 11?

A. $15,000.

Q. That, taken together with the value of the land, is that the sum for which the property would sell under ordinary circumstances?

A. Yes, for the purposes for which it was used.

Q. As of that time?

29058 A. Yes, sir.

Q. Was that the full value in your opinion for that property?

A. Yes, sir.

Q. Did you value the holder on that?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. The machinery in the governor building?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of the holder in that year?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of the rest of the improvements in the building?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. Now, Block 1692, Lot 1?

A. Value of the land, $235,000. 29060

Q. For October 1, 1911?

A. Yes, sir.

Q. The dimensions on 99th Street were what?

A. 370 feet 6 7/8 inches, by irregular, by 201 feet 10 inches on the avenue front.

Q. On 99th Street, how many feet?

A. 370 feet 6 7/8 inches.

Q. And on the marginal street line?

A. 225 feet 4 5/8 inches.

Q. You gave me the value for 1911. Now, 1912, wholly unimproved?

A. Same value.

Q. And 1913, wholly unimproved? 29061

A. Same value.

Q. These sums that you have just given me for that lot wholly unimproved in 1911, 1912 and 1913, are those the sums for which that would sell under ordinary circumstances?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Is it the full value of the property, in your judgment?

A. Yes, sir.

Q. What improvements did you find on it?

A. There was an oil tank there.

Q. As of October 1, 1911, there was an oil tank?

A. Yes, sir, built in August, 1911.

Q. Is that all, just the oil tank?

A. Yes, sir.

Q. In 1912, the same oil tank?

A. Yes, sir.

Q. In 1913, the same tank?

A. Yes, sir.

Q. Did you put any value on that oil tank?

29063 A. Yes, sir.

Q. It was not a holder?

A. I can't recall just what it was now. The memorandum there shows that I placed that value myself in 1911.

Q. What value did you place on it in 1911?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. What value did you place on it in 1912?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

29064 Q. What value did you place on it in 1913?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, that same lot for 1919?

A. For 1919, $245,000.

Q. That is wholly unimproved?

A. Wholly unimproved.

Q. Is that the sum for which it would sell in your opinion under ordinary circumstances as of that date, wholly unimproved?

A. Yes, sir.

Q. That is the full value in your judgment?

A. Yes, sir.

Q. What improvements were on it in 1919?

A. The oil tank.

Q. How much of that lot does that oil tank occupy?

A. I don't recollect.

Q. A small tank it must have been?

A. Only a small tank.

Q. There was nothing else on it that you remember or found?

A. No, sir. 29066

Q. Did you value the oil tank for that year?

A. Yes, sir.

Q. Your own independent valuation?

A. Yes, sir.

Q. What was the value you placed upon it?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what was the value of that oil tank?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. Chambers: Exception. 29067

Q. Now, Block 1704, Lot 5, October 1, 1911. I want to get your measurements first. How many feet on East 111th Street?

A. 506 feet.

Q. On East 110th Street the same?

A. The same.

Q. Pleasant Avenue and First Avenue, 201 feet 10 inches?

A. Yes, sir.

Q. What value did you place upon that lot on October 1, 1911?

A. $335,000. That was not in 1911. That was not until 1913, that that was apportioned.

Q. What is your figure for 1911?

A. The 1st of October it was assessed with Lot 1 as a whole.

Q. What were the dimensions?

A. The dimensions then—there was the same frontage on First Avenue, 201 feet 10 inches, and 613 feet on each street.

Q. What value did you place upon that in 1911, wholly unimproved?

29069 Mr. Ransom: Do you mean for the 1911 taxes?

Mr. Chambers: For 1912 taxes.

A. The value of the land was $450,000.

Q. Then in 1912, the same dimensions for the 1913 tax?

A. Yes, sir, same dimensions.

Q. What valuation for that year?

A. Same valuation.

Q. Now, 1913?

A. In 1913 Lot 1 was assessed at $115,000.

Q. Lot 1 is what? 107 feet on 111th Street?

A. 107 feet on each street and 201 feet 10 inches

29070 on both avenues.

Q. That was how much wholly unimproved?

A. $115,000.

By the Master:

Q. Lot 5 does not run over to First Avenue?

A. No, sir.

Q. You described it before as running to First Avenue, you said on both avenues?

A. Lot 5 originally was then Lot 1, and as Lot 1 it ran from First Avenue to Pleasant Avenue, took in the whole square block.

Q. For the taxable years 1912 and 1913?

A. No, for 1911 and 1912 I taxed it for 1912 and 1913.

Q. What Mr. Chambers wants you to give first is your assessment for the first year that you assessed it. When was that?

A. The first I assessed it it was Lot 1, as a whole, $450,000.

Q. What taxable year was that for?

A. 1912. I taxed it in the year 1912 for the year 1913 as $115,000 on Lot 1, which takes in the First Avenue front, with the Standard Gas plant on it. 29072

By Mr. Chambers:

Q. 107 feet on 111th Street and 110th Street?

A. That is right.

Q. Now, I want to get your valuation unimproved of the balance of the block that is known as Lot 5?

A. $335,000.

Q. The dimensions of that would be what?

A. 506 feet on 110th Street, the same on 111th Street, 201 feet 10 inches on Pleasant Avenue.

Q. The rear abutting on Lot 1?

A. Yes, sir.

The Master: In 1913, for 1914?

The Witness: The land figure was the same 29073 $335,000.

Q. These sums you have given me, first for Lot 1 occupying the whole block for two years, and then Lot 1 being 107 feet on East 111th Street and 201 feet 10 inches on First Avenue, and the value you have given for Lot 5 as you described in 1913 for the 1914 taxes, are the sums for which this piece of property would sell in your judgment under ordinary circumstances if wholly unimproved as of those dates?

A. Yes, sir.

Q. Mr. Levy, can you give me your factors to get the value of that and that (indicating), excluding that (indicating), as of October 1, 1912?

A. I could not say. Those factors have been changed; I could not say as to that.

Q. What were your factors in 1912?

A. I couldn't tell you.

Q. Why can't you tell what the factors were for 1912?

A. Without analyzing the land I can't tell you, because there are changes made in factors which are
29075 erased from these books.

Q. Did you value it at so much a lot?

A. Yes.

Q. In 1912?

A. If you want me to analyze this I will figure it out for you.

Q. Give me the lots on Pleasant Avenue, how much October 1, 1912?

A. The First Avenue land value was $440 a front foot; that is Lot 1.

Q. How much for corners?

A. 60 per cent for corners.

Q. Anything for plottage?

29076 A. 10 per cent for plottage.

Q. How deep, lots 25 by 100?

A. Which plot are you speaking of?

Q. This one that became Lot 1?

A. Yes.

Q. 25 by 100?

A. Yes.

Q. How much for the lots on Pleasant Avenue?

A. The factors are not here, I can't give you that.

Q. Can you give me this (indicating); take this 225 feet right in here as of October 1, 1912, can you give me that?

A. I can't give you any of the years previous to 1919; I haven't got those land factors.

Q. Can you get them do you think?

A. There is no way of obtaining them accurately. I could figure it out at any factor you want to give me, but there is no method of obtaining that.

Q. You mean you haven't your factors there?

A. No.

Q. Have you the factors for any year?

A. For 1919.

Q. What improvements did you find on this property on October 1, 1911, Lot 5? 29078

Mr. Ransom: There wasn't any Lot 5.

A. In 1911 there wasn't any Lot 5, the Judge is right.

Q. Take the whole lot, Lot 1, what improvements were on it?

A. There were some small buildings used as garage, and there was a new building in progress.

Q. That is October 1, 1911?

A. Yes, sir. They were building a building there for use by the Standard Gas Company for meter department. There was 50,000 feet of steel crib concrete work at that time, figured at 70 cents a square foot, and 10,000 cubic yards of excavation at one dollar a cubic yard. 29079

Mr. Ransom: Up to October 1, 1911, is that?

The Witness: Yes, sir.

Q. What else was there on the First Avenue end as of October 1, 1911?

A. That wasn't there on October 1, 1911. That was there in 1912, for the 1913 assessment.

Q. What was on the property October 1, 1911?

A. From this record that work was done in 1911. There was progress made on the foundations, and

there were some small garages there valued at about $5,000. There was $50,000 worth of improvements in October, 1911.

Q. On the whole lot?

A. Yes, $5,000 for some garages that were there, stable sheds, one-story brick shed. Then as I said there was figured 50,000 feet of steel crib concrete at 70 cents, which would figure about $35,000; 10,000 cubic yards of excavation, which would be $10,000 more, and then the $5,000 would make $50,000 for the improvements.

29081 The Master: For the 1912 assessment?

The Witness: For the 1912 assessment.

Q. Do you know where those structures were located?

A. Only the larger building.

Q. Where was that?

A. On the First Avenue front.

Q. On what afterwards became Lot 1?

A. Yes, sir.

Q. Now, in 1912, were the same improvements there?

A. There was a little more progress made.

29082 The Master: The subdivision had taken place then, hadn't it? You had Lots 1 and 5?

The Witness: Yes, sir, that is right.

Q. Now on Lot 5, what improvements were there as of October 1, 1912?

A. I have listed $50,000 on that. That is the 1913 assessment. Wait a minute. I have it straight now. The construction work was not started until the following year.

Q. What year was that? It was not started until when?

A. For the 1913 assessment. There was $50,000 worth of buildings on Lot 1 as it was in 1911 for the year 1912.

The Master: Do you remember what those buildings were?

The Witness: Yes, some brick buildings there, and a frame building and trestles. I don't recall just exactly what the buildings were that were valued at $50,000.

The Master: In 1912 this work was in course of construction on Lot 1?

The Witness: Yes, sir. On the 12th day of June, the day I visited it, I found work on the excavation. At that time there was 50,000 feet of steel crib concrete and 10,000 cubic yards of 29084
excavation work done on Lot 1.

The Master: That was as of October 1, 1912. You had $45,000 worth of new construction and $5,000 worth of other sheds.

The Witness: On Lot 1 I only assessed that for $25,000. I figured there was about $50,000 worth of work, but I only assessed it for $25,000.

Q. Have you given me everything on Lot 5 for the 1913 assessment?

A. Everything I can recall.

Q. What value did you give me for Lot 5 for the 1913 assessment, plus the value of the buildings you found on there? Is that the sum for which that would 29085
sell in your judgment under ordinary circumstances?

A. Yes, sir.

The Master: How about 1913 for 1914 on Lot 5?

The Witness: The same.

The Master: The same situation as to the land?

The Witness: Same situation.

Q. And you make the same answer as to the sum for which it would sell under ordinary circumstances?

A. Yes, sir.

Q. Now, 1919, on this lot. I am only interested in Lot 5 for 1919?

A. The value of the land there was $355,000.

Q. Unimproved that is?

A. Yes, sir.

Q. Now, you can give me, can't you, cut off 281 feet on Pleasant Avenue—

A. That is in the original testimony.

The Master: You said how much unimproved?

The Witness: $355,000.

The Master: That is the figure you gave be-
29087 fore when Mr. Ransom asked you?

The Witness: Yes, sir.

The Master: Were there any improvements on it?

The Witness: Yes, sir, several buildings on there, small garages and sheds of different kinds.

Q. What value did you place on them?

A. $57,000.

Mr. Ransom: I object to the question and move to strike out the answer unless it appears that that covers buildings alone and does not cover—

The Witness: It covers the coal pockets and
29088 iron trestle.

The Master: I will take this witness's testimony as to the value of that; I think he is qualified.

Mr. Ransom: Here was a coal pocket, conveyor, trestle and so on.

The Master: Yes. I think Mr. Levy knows enough about it to tell us what it was worth in his judgment.

Mr. Ransom: Exception.

Q. The coal trestle, etc., was on the Pleasant Avenue end of the property, do you recall?

29089

A. I am quite certain it was. It would be nearest the river naturally, because they had to take the coal off the barges.

Q. You cannot give me the location of the other buildings now, can you?

A. No.

Q. The sums that you have just given for Lot 5, as of October 1, 1918, is that the sum plus the land value that you have given, is that the sum for which that lot would sell under ordinary circumstances with the improvements thereon in your judgment?

A. Yes, sir.

29090

Q. And was that the full value in your judgment?

A. Yes, sir.

Q. For that lot with the improvements thereon.

A. Yes, sir.

Q. Now, Block 1642, Lots 32 and 33, for 1919.

The Master: We have the land value on that.

The Witness: Yes, sir.

Q. What improvements did you find on Lot 33. That is 150 feet 5 inches on 114th Street, 25 feet 2 3/4 inches on Third Avenue, and 150 feet on 114th Street?

A. Yes, sir.

Q. Then 100 feet 11 inches deep, and 50 feet 5 inches in the rear?

29091

A. Yes, sir.

Q. L shaped?

A. Yes, sir.

The Master: It was used as a branch office building?

The Witness: Yes, sir.

Q. Did you look the building over?

The Master: He has already told us that he looked at all these buildings.

Q. What value did you place upon it as of October 1, 1918?

A. $47,000.

Q. Together with the land value that you gave and this building, were those together the sum for which that property would sell with that improvement on it under ordinary circumstances?

A. Yes, sir.

Q. And was that the full value of it as of that date in your judgment?

A. Yes, sir.

The Master: Now, go back to 1914.

Q. Block 1670, Lot 1, for the taxes of 1915, the October 1, 1914, valuation.

29093 A. I did not assess it in 1914 for 1915 valuation.

Q. Then this is October 1, 1913?

A. That is right.

The Master: He has given you those.

Q. What was it for October 1, 1913, wholly unimproved?

A. $525,000.

Q. That is for that lot wholly unimproved?

A. Yes, sir.

Q. Was that the sum at which in your judgment it would sell wholly unimproved under ordinary circumstances?

A. Yes, sir.

29094 Q. Was that its full value?

A. Yes, sir.

Q. Now, give it to me with the improvements on it as of October 1, 1913?

Mr. Ransom: I object to that.

The Master: Is this the building that had all of that manufacturing plant in there, that is, the holders and a lot of manufacturing apparatus?

The Witness: The value for that year was $50,000.

The Master: The same as the year before?

The Witness: Yes, sir.

Q. For the buildings?

A. Yes, sir.

Q. Taking the land value, and the value of the buildings you have just given, was that the sum at which that property would sell under ordinary circumstances, taking into consideration the use that it was put to?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. You value the other property on there, the holders and machinery? 29096

A. Yes, sir.

Q. Are you able to say what was the value of the holders and machinery?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Will you give the value of the holders and the machinery?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, Block 1682, Lot 8, October 1, 1913?

A. $10,500. 29097

The Master: I think this witness gave us three years.

The Witness: Well, they are the same, it doesn't make any difference.

The Master: You were giving us figures as of October 1, 1912, October 1, 1913, and October 1, 1914?

The Witness: As of October 1, 1911, for 1912, October 1, 1912, for 1913, and October 1, 1913, for 1914.

The Master: You have been giving us three years all the time.

The Witness: I think you are right. The one you wanted was 1914.

The Master: 1914 for 1915.

The Witness: Yes.

Q. You didn't assess it?

A. I did for the 1914 assessment in 1913.

The Master: That you gave us. Then were the figures you gave us as of October 1, 1910, for 1911?

29099 The Witness: No.

The Master: Then it was the second Monday in January for 1911?

The Witness: No, it was October, 1911, for 1912.

The Master: You gave us three years.

Mr. Chambers: He didn't intend to.

Mr. Ransom: The figures which the witness gave for this lot were as follows: 1911, $12,000, 1912, $12,000, 1913, $10,500.

The Master: What for 1670?

Mr. Ransom: The figures which he originally gave were 1912, $475,000; 1913, $525,000; 1914,

29100 $525,000.

By Mr. Chambers:

Q. Turn to Block 1670, Lot 1, Mr. Levy.

A. What year, please?

Q. Give me 1911, 1912 and 1913.

The Master: He did not assess it for 1911. There you go again.

Mr. Chambers: He did not assess it for what?

The Master: 1911.

Mr. Chambers: I said 1912.

The Master: You said 1911, 1912 and 1913. He did not assess it for 1911.

Mr. Chambers: He did assess it for 1912, on October 1, 1911.

The Master: But not for 1911.

Q. Give me the Block 1670, Lot 1, the valuation for 1911, 1912 and 1913.

A. I did not assess it for 1911.

Mr. Ransom: Mr. Chambers ought to stop—just mixing up this record.

The Master: I do not want any statement from you, Judge Ransom.

Mr. Chambers: You misunderstand it.

The Master: No, you misunderstand. 29102

Mr. Chambers: I will put it in another way.

Q. Give me the assessment for the taxes of 1912, 1913 and 1914. I ask it the other way always; I am not interested in the taxes but I wanted your valuation for 1911, 1912 and 1913 for the taxes of 1912, 1913 and 1914. Now, give them to me, will you?

A. If you would qualify that question we can answer it. I understand it both ways.

The Master: Give us the valuations of Block 1670, Lot 1, for 1912?

Mr. Chambers: Unimproved.

The Witness: 1912 the land value was $475,000. 29103

By the Master:

Q. For 1913?

A. $525,000.

Q. For 1914?

A. It is the same $525,000.

Q. For 1912 what improvements did you give me, what figure for the buildings?

A. $50,000.

Q. And for 1913?

A. The same.

29104 Herman J. Levy, Direct.

Q. 1914?

A. The same.

By Mr. Chambers:

Q. Those sums that you have given are the sums for which that property would sell if wholly unimproved under ordinary circumstances as of those dates?

A. Yes, sir.

The Master: You need not repeat that question again, because I told you at the start the witness said of all these figures that he gave from
29105 time to time he would have to answer yes to that question; so do not let us waste any more time on that.

Q. Block 1682, Lot 8. Give me the valuation for the tax years 1912, 1913, 1914?

The Master: Of the land unimproved.

A. The land was 12 and 10-5.

The Master: You remember that you gave us two 12's and a 10-5 before.

The Witness: I don't remember.

Mr. Ransom: Yes, he did.

The Master: You did.

Q. You have not given me all.

29106 A. Now, you want 1914. $12,000 for 1912, $10,500 for 1913.

Q. And 1914?

A. 1914 it is $10,500.

Q. No improvements on that?

The Master: Any improvements in 1912, 1913 and 1914?

The Witness: No, vacant.

The Master: What was your next lot?

Mr. Chambers: Lot No. 11.

By the Master:

Q. What was it for 1912?

A. $360,000 for the land for all four years.

Mr. Chambers: Now, the improvements.

Q. Any improvements for 1912, any buildings?

A. The building was $16,000.

Q. For 1913?

A. The same for all four years.

By Mr. Chambers:

Q. You said four years a minute ago and you meant three years?

A. Yes. 29108

Q. Block 1692, Lot 1. What was it for 1912?

A. $235,000.

The Master: 1912?

The Witness: Yes.

Q. 1913?

A. $235,000 for 1913 and $235,000 for 1914.

Q. Now, the improvements?

The Master: Just the buildings.

A. $5,000.

Mr. Ransom: I move to strike that out. That is a tank, which you did not permit him to testify to. I move to strike it out physically.

The Master: There was no building there? 29109

The Witness: No, sir.

The Master: Motion granted.

Mr. Ransom: I move to strike it out physically.

By the Master:

Q. So there was no building that you added for 1912, 1913 or 1914; is that correct?

A. No building.

By Mr. Chambers:

Q. Block 1704, Lot 5.

A. In 1912 it was assessed as Lot 1.

Q. And it occupied the whole block?

A. The whole land is assessed at $450,000.

By the Master:

Q. The rest you figured as $50,000 in the item for the building, on the whole block?

A. On the whole block.

Q. In 1913 had it been apportioned?

A. Yes.

Q. What did you figure Lot 1 for, the land?

A. $115,000.

By Mr. Chambers:

29111 Q. Lot 5?

A. $335,000 for that year.

Q. 1914, Lot 1?

By the Master:

Q. Any improvements on Lot 1 for 1913?

A. The building $25,000.

Q. For Lot 1 of 1913. And on Lot 5 for 1913?

A. $50,000.

Q. For the buildings?

A. Yes.

Q. Take 1914. What is your value for 1914?

A. On Lot 1?

Q. On Lot 5.

29112 A. On Lot 5 it is $335,000 and $50,000 more for the buildings. That would be $385,000.

The Master: What other lot?

The Witness: Lot 1.

The Master: No, we do not want Lot 1.

The Witness: Yes, sir, there are buildings on it.

Mr. Chambers: We do not want Lot 1; we do not need that.

The Witness: That is right, that is the Standard Gas Company.

By Mr. Chambers:

Q. Have you the date there that it was sold to the Standard Gas Company, for Lot No. 1?

The Master: No, the apportionment was made in 1913, according to the tax map.

Q. June 26, 1912, wasn't it sold to the Standard Gas Company?

A. No, there is nothing here to show it. The apportionment map will show the apportionment for the 1913 tax.

The Master: What other lot?

Mr. Chambers: That is all there is. 29114

Q. Now, all these sums that you have given for your unimproved and with the improvements are the sums for which the property would sell in your judgment as of those dates under ordinary circumstances?

A. Yes, sir.

Q. And it is the full value?

A. Yes, sir.

Q. Of the property unimproved and improved?

A. Yes, sir.

Q. With the improvements that you have testified to?

A. Yes, sir.

CROSS-EXAMINATION BY MR. RANSOM: 29115

Mr. Ransom: I think in view of the fact that with the other witnesses, the basis of the action of these deputy commissioners has been thoroughly gone into, I shall refer only to a few questions.

Q. For what year did you give to the General Office Building at 15th Street and Irving Place a value of $3,345,000?

A. For the year 1915 tax, assessment made in 1914.

29116 Herman J. Levy, Cross.

Q. That is, you regarded that as the value of the property for tax purposes?

A. Yes, sir. The company did not think I was right.

Q. In determining that did you take into account the income?

A. Mostly construction cost, and naturally the income possibilities of the building.

Q. You said that you did not think that that figure represented the full cost of the property?

A. No, sir.

29117 Q. As of that date?

A. No, sir.

Q. That is, that figure in your judgment was not the full cost to reproduce the property?

A. No, sir, because of the type of construction there. They had an extra expenditure when they put up the easterly and westerly buildings overhanging the centre building, which was removed. I made an allowance of something like $300,000 for the extra cost of that type of construction.

Q. So that the building could not have been reproduced for this figure which you gave?

A. At no time. The steel in the building cost nearly

29118 $50.00 a ton, 6,000 tons of steel in it.

Q. In testifying regarding these various buildings as to the gas plant, Block 670, Lot 1 and elsewhere, you gave values, did you, which you said represented your judgment of the value of the property for use as a gas plant?

A. Yes, sir.

Q. How did you determine the value of that kind of property for use as a gas plant?

A. Well, it was necessary for the gas plant to have that type of building in order to operate the plant, and

I took the structural value of the building and applied it to the value.

Q. That is what it would be worth to this company or some other company to use as a gas plant?

A. Any gas company using it.

Q. Now, how much a given property is worth to this or to any other company for use as a gas plant would depend upon the income which the company could get from the gas plant, wouldn't it?

A. Well, to some extent. The fact that it is a going proposition, and there is no objection to it is sufficient to form a basis of opinion as to its value, it must be worth the producing cost.

Q. What a given property is worth for a—

A. (Interrupting.) To a going concern.

Q. What any property is worth for a particular use depends upon the income which can be obtained from the use, does it not?

A. Yes, sir, but inasmuch as the Gas Company at that time was a going concern, with no complaint, I took it for granted it was worth what it could be built for.

Q. And how did you figure what was the income from this property for this Gas Company?

A. I am telling you, inasmuch as the Gas Company was a going concern, it was sufficient for me to base my opinion that it was worth what it was used for.

Q. And you figured the property was worth that for this company or for any other gas company?

A. To any solvent company.

Q. Under the conditions under which it was then having to do business?

A. Yes, sir.

Q. The company which was doing business used that plant under the conditions prevailing at that time when you made the assessment?

A. Yes, sir.

Q. But you didn't know anything about what were the earnings of this or any other gas company?

A. Nothing more than what you might find from the usual reports of gas companies at the time they declared dividends.

Q. Well, you read the reports then of this company?

A. Oh, at different times.

Q. And looked over their operating figures?

A. Yes, sir.

Q. You got them from the reports made by the
29123 Public Service Commission to the Legislature?

A. By the company to the Public Service Commission, and so forth.

Q. Well, which did you have, the bound volume of the Commission reports to the Legislature?

A. The bound volume.

Q. And the figures which you there derived as to the earnings of this company as reported by the Commission, were taken into account by you in determining what this property was worth?

A. Only in so far as to inform me that it was a going concern and naturally it must be worth the value which it would cost them to produce for their
29124 use.

Q. Were those figures which you gave for these plants the reproduction cost at that time?

A. About what the reproduction would be, allowing for depreciation of that type of building.

Q. That is you figured and based your values upon what it would cost to reproduce at that time?

A. Yes, sir.

Q. Will you tell me which your figures are? Were they the cost to reproduce the property at that time, or were they the rental value or value of the use of such a property to a gas company?

A. The figures represent both.

Q. Both?

A. Why, naturally. If a piece of property is to be used for a purpose, it cannot be used for that purpose unless the gas company meets within certain bounds. You would not attempt to build a building as a retort house such as you have used for your offices.

Q. Let us take the Park Row Building, right across the street. Do you say that there would be any difference between the value of the building based on what it would cost to reproduce it and the value of the building based on what it would rent for?

A. The value of them? I think there would be? 29126

Q. Yes, would there be a difference?

A. Well, that would depend. By that you mean as speaking as of today?

Q. Yes.

A. It would depend on whether those leases were open or not. If they were on old leases, you could not capitalize it at the present day reproduction cost, but if you had that building with open leases today, then if the reproduction cost is a great deal more than it was previously, it might be possible to rent it and capitalize it for a sufficient return.

Q. Well, one method of ascertaining value for tax purposes is to capitalize what it could be rented for, 29127 isn't it?

A. That is one of the considerations in appraising property.

Q. What somebody else would pay for it who wanted that kind of property?

A. Yes, sir.

Q. Is that what you did with this gas property?

A. That was one of the considerations insofar as this—the relation that these buildings bore towards their use for the operation of the company's business.

Q. Now, on Block 1692, Lot 1, didn't you find there a brick dwelling?

A. Not in my recollection.

Q. Didn't you find there a locomotive, train and track?

A. Not as I recall.

Q. Didn't you find the property covered with bins for open coal storage or largely covered?

A. Well, you could not call them bins. If I did see any such thing as that there I apparently did not think they were of sufficient importance to place a value on
29129 them.

Q. Some other deputy commissioners here have testified to the existence of this brick dwelling and as to its value. You did not find any such building there?

A. Block 1692?

The Master: The witness says that if he did, he did not value it.

The Witness: If I saw it I did not put any value on it.

Q. Block 1704, Lot 5, how did you compute the value for tax purposes of this coal handling apparatus on that property?

A. I placed a nominal value of $5,000 on that.

29130 Q. What do you mean nominal value?

A. Well, I had the number of feet that there was in it at the time, and I figured what steel work of that type might be worth, and I placed that value on it.

Q. Well, do you stand here on your judgment that at that time the cost to reproduce that coal handling apparatus was $5,000?

A. Yes, sir.

Q. The apparatus was practically new at that time?

A. What year are you speaking of?

Q. 1912 and 1913.

29131

A. Oh, I do not recall whether it was new or not at that time. There are some things in assessing property that we never attempt to place anything like a full value on. I will say that.

Q. Now, on this Lot 5, on October 1, 1911, wasn't there new construction going on on Lot 5, rather than on what became Lot 1?

A. Not to my recollection.

Q. Your present recollection is that the building of the building on what is now Lot 1 began when?

A. In the year 1911, if I am not mistaken. No, I think the first work was done there in 1912.

29132

Q. You spoke of being there on June 6, 1912?

A. That is the date.

Q. And you found a large quantity of excavation, and a lot of the concrete in?

A. Yes, sir.

Q. That was on what is now Lot 1?

A. Yes, sir.

Q. Wasn't there a new modern building being erected on Lot 5 the preceding year?

A. Not to my recollection.

Q. What is now Lot 5?

A. It may have been before my time.

29133

Q. So the figures you give there for 1911 with respect to new construction related not to the building on what is now Lot 1, but to construction on what is now Lot 5?

A. Well, I stated that the work that was done, the $50,000 assessment on, for the year 1912, was for what is now Lot 5.

The Master: Is there much more of this, Mr. Ransom?

Mr. Ransom: No, I think that is all.

The Master: I want to let Mr. Levy go if I can.

Mr. Ransom: I think I will let him go.

(Recess until 2:30 P. M.)

29134 Peter J. Kelly, Direct.

PETER J. KELLY, called as a witness on behalf of the defendant Newton, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. You are a Deputy Tax Commissioner?

A. I am.

Q. How long have you been such?

A. I have been Deputy Tax Commissioner for about 25 years.

Q. Before that what business were you in?

29135 A. I was a clerk in the Tax Department.

Q. Before you were a clerk in the Tax Department, what was your business?

A. That brings me back to a boy over here on Broadway. I am very nearly 40 years in the service.

Q. Ever since you have been a Deputy Tax Commissioner have you been assessing improved and unimproved property?

A. Yes, sir, I have assessed both improved and unimproved property.

Q. You have operated in some of the different districts?

A. I have, yes, sir; I was in charge of the Bronx.

29136 Q. Were you appointed to your office after a competitive examination?

A. I was.

Q. And took an oath of office?

A. An oath of office.

Q. Have you kept track of sales of property unimproved and improved?

A. I have kept track of sales.

Q. During these years that you have been Deputy Tax Commissioner?

A. Yes, sir.

29137

The Master: You have attended these conferences that they have over in the Tax Department as to how to value property and the factors to be applied to various buildings and things of that sort?

The Witness: We don't have any conferences that I recall as to the different factors. The department at one time prepared a book of factors.

Q. But you don't recall that you attended any of the conferences?

A. I don't recall that I attended any of the conferences, no.

29138

The Master: Did you get one of these books of factors?

The Witness: The books of factors were distributed to the boys in the departments, and to outsiders, for that matter.

Q. Were you bound by those factors?

A. No, I was not bound by them.

Q. Did you use your own judgment?

A. I used my own judgment in any work I did.

Q. What is the first piece of property you have?

A. The piece bounded by 17th Street, 18th Street, Tenth and Eleventh Avenues.

29139

Q. What block?

A. Block 689.

Q. What is the first year you assessed that block?

A. For the tax of 1916.

The Master: Only one year?

The Witness: I assessed it three years. My first year was 1916. I assessed it for 1917 and 1918.

Q. For the 1916 taxes?

A. I assessed it in 1915 for the taxable year of 1916.

Q. You visited the property in 1915?

A. I visited it in 1915.

Q. And your valuation is of October 1, 1915?

A. Yes, sir, for the year 1916.

The Master: And for the taxable year 1917, it was October 1, 1916?

The Witness: Yes, sir.

The Master: And for 1918 you looked at it in 1917?

The Witness: Yes, sir.

Q. What are the dimensions of that Block 689, Lot 17?

29141

A. Block 689, Lot 17, on Eleventh Avenue, 197 feet 3 inches.

Q. Eleventh Avenue used to be Marginal Street?

A. Marginal Street.

Q. Or Eleventh Avenue?

A. Or Eleventh Avenue. On 18th Street 450 feet 11 5/8 inches; on Tenth Avenue 184 feet; on West 17th Street 379 feet 10 5/8 inches.

Q. What value did you place upon that lot wholly unimproved for the 1916 taxes?

A. $440,000.

Q. And the same for the 1917 taxes?

29142

A. 1917 it was changed.

Q. Give me that figure?

A. 1917, $515,000.

Q. For the 1918 taxes?

Mr. Goetz: I object to the 1918 taxes; we didn't own it then.

Q. Give me the assessed valuation for the 1918 taxes?

A. $515,000.

Q. Now, those sums which you have just given for that lot, are those the sums for which it would sell

in your judgment if wholly unimproved during that time?

A. Wholly unimproved during that time, in my judgment.

Q. Now, go back to 1916 tax, what improvements were on there?

A. There were about ten or twelve old buildings that had been used—I don't know what they had been used for. They were not in use when I saw them. They looked like old shops.

Q. Did you look them over?

A. I looked them over. 29144

Q. Did you place a valuation on those buildings?

A. Yes, sir.

Q. How much?

A. $15,000.

Q. And now for the 1917 tax?

A. I reduced that building value to $5,000.

Mr. Goetz: I want to make sure that the witness is testifying to the buildings alone.

Q. Are you testifying to the buildings alone?

A. The $15,000 was buildings; there was nothing else there.

Q. You found no other improvements except those buildings in those three years? 29145

A. No other improvements.

Q. Give me for each of those years 1916, 1917 and 1918, the total valuation improved and with the improvements on it?

A. The total valuation for 1916 would be $455,000.

Q. Now, 1917?

A. 1917 and 1918, $520,000.

Q. Everything altogether?

The Master: Now Mr. Goetz, I will take your objection as if it had been made before the answer was given.

Mr. Goetz: I object to it as incompetent, irrelevant and immaterial. It appears from the testimony of the witness that he included everything that he could find in and about those buildings. He therefore included the contents of those buildings.

The Master: Objection overruled.

Mr. Goetz: Exception.

Mr. Chambers: I will ask him that separately.

Q. Did you value the contents of the buildings at all?

29147 A. There were no contents; they were all vacant.

Q. Now, Mr. Kelly, the sums you have given for 1916, 1917 and 1918, unimproved and improved, are those the sums for which in your judgment that property would sell as you found it at that time?

A. Yes, sir.

Q. Was it the full value in your judgment?

A. It was the full value in my estimation and judgment.

Q. And the value you placed on the buildings, was that your own judgment about it?

A. My own judgment entirely.

Q. You said they were vacant, you thought?

29148 A. Vacant.

Q. Old buildings?

A. Nothing carried on there that I could see.

The Master: You felt that was all the company ought to be taxed for on those buildings?

The Witness: Yes, sir.

Q. You thought that was the value of them, all the value there was to them?

A. All the value there was to them that I can see.

Q. Now, what is the next block?

A. Block 690, Lot 12.

Q. Give me the dimensions of Block 690, Lot 12. This is for the 1916 taxes?

A. For 1916 and for 1917 those dimensions will hold good for both years. In 1918 there will be a change.

For 1916, the front on Eleventh Avenue or Marginal Street was 98 feet 7 1/2 inches, running back through the center of the block 384 feet 8 1/4 inches, to a point which would be 125 feet west of Tenth Avenue; running north 92 feet to 19th Street; then running east to Tenth Avenue 125 feet; running south on the westerly side of Tenth Avenue 184 feet; 29150
running westerly on the north side of 18th Street 474 feet 1 3/4 inches to the point of beginning.

Q. Now, give me your valuation—you visited all of this property you are testifying to before you made the valuations? A. I did.

Q. Now, give me your valuation on that block?

Mr. Goetz: It appears affirmatively by the evidence offered on behalf of the complainant that this property was not used after January 1, 1915, by the company.

The Master: Objection overruled.

Mr. Goetz: There is no use getting the value of this property after it ceased to be used by the 29151
complainant.

The Master: Objection overruled.

Mr. Goetz: Exception.

The Master: What was the value unimproved?

The Witness: It is all unimproved. $320,000 for 1916.

The Master: And 1917?

The Witness: $376,000 for 1917.

The Master: Give us the description for 1918?

Mr. Chambers: We don't need it for 1918.

Q. Just go back to 1916 and 1917, were there any improvements on it?

A. There were no improvements on it.

Q. The sums that you have given me for that lot for 1916 and 1917 taxes, are those the sums for which in your judgment it would sell?

A. Exactly.

Q. As wholly unimproved?

A. Yes, sir.

Q. Was that the full value?

A. That was the full value, in my judgment.

29153 Q. Now, Block 691, Lot 11, when did you assess that?

A. I assessed this during 1915 for the tax of 1916.

Q. And for the 1917 taxes?

A. Yes, sir.

Q. Give that?

Mr. Goetz: I object to that. We ceased to use that in 1910. All of this is worthless.

The Master: Objection overruled. I don't know why Mr. Chambers wants it, but I will take it.

Q. Give the value you placed upon that Block 691, Lot 11, for the 1916 taxes?

29154 A. $200,000.

Q. And for the 1917 taxes?

A. $212,000.

Q. Were there any improvements on it?

A. None.

Q. Now, those two sums that you have given, in your judgment are those the sums for which that property would sell wholly unimproved?

A. Yes, sir.

Q. And was it the full value of the land in your judgment?

A. It is the full value in my judgment.

Q. You did not give me the dimensions of that?

A. On the west side of Eleventh Avenue or Marginal Street, 197 feet 3 inches; on the south side of 20th Street, 189 feet, 6 inches, running south to 19th Street, 184 feet; running west on 19th Street 118 feet 5 inches.

Q. Have you any other parcels Mr. Kelly?

A. I have another parcel, yes.

Q. Which one is, what block?

A. Block 715.

The Master: All the information that you have got with reference to the value of real estate, land and buildings, you have acquired in your work in the Tax Department? 29156

The Witness: Yes, sir.

The Master: You have never been a real estate broker or anything of the sort?

The Witness: No, sir.

Q. Now, Block 715, what lot?

A. Lots 51 and 59.

Q. What years did you assess them?

A. I assessed that for 1916, 1917 and 1918.

Q. Give me the dimensions of Lot 59 as you assessed it.

A. Lot 59 for the year 1916 was 200 feet front on 18th Street with a depth of 92 feet. 29157

Q. What was your valuation on that for 1916?

A. On the land, $88,000.

Q. And for the 1917 taxes?

A. $98,000.

Q. Were there any improvements on there?

A. There was an improvement there.

Q. In 1916 what improvements were there?

A. It was a building that had been used for some purpose in connection with the Gas Company but vacant.

Q. You looked it over?

A. I looked it over.

Q. And then you put a value on it of how much?

A. $9,000.

Q. And for the 1917 tax?

A. For the 1917 tax the Gas Company had leased that to an individual and he made alterations in it, turning it into a garage and the improvement valuation on that was $27,000.

Q. Now, give the total for 1916 and 1917 with the improvements?

29159 A. The total for 1916 was $97,000. The total for 1917 was $125,000.

Q. Those sums that you have given, are those the sums for which the property would sell in your judgment improved and unimproved as of those dates?

A. Yes, sir.

Q. And was it the full value in your opinion?

A. The full value.

Q. Of the lot as improved and unimproved?

A. Yes, sir.

Q. Lot 51, what depth is that?

A. Lot 51 is a single lot 25x92.

Q. That is in the same Block 715?

29160 A. The same block, yes.

Q. Your valuation for 1916 was what?

The Master: For the land.

A. The land is $10,000.

By the Master:

Q. For 1916?

A. Unimproved. It is $10,000.

Q. For 1917?

A. 1917 that was merged with Lot 59 and includes that valuation which I gave you, making that lot 225 feet, as assessed for 1917.

By Mr. Chambers:

Q. Any improvements on it for the 1916 taxes?

The Master: Not on this lot.

A. Yes, on this lot there was an old building.

By the Master:

Q. What, on this lot?

A. A two-story building on it for 1916.

Q. But you did not give it any value?

A. I had $9,000 on it, yes.

Q. No, the second lot you are talking about.

A. That was vacant.

Q. In 1917 it was merged with the other lot? 29162

A. Yes.

By Mr. Chambers:

Q. So you gave no valuation to that lot for 1916 with improvements because there were not any?

A. There were not any.

The Master: You have got the figures for 1917 improved.

Q. Have you any others?

A. That is all, sir.

The Master: Any questions, Mr. Goetz?

Mr. Goetz: Just a few.

Cross-examination by Mr. Goetz:

Q. Where did you get your description of Lot 51 29163 in Block 715; was that taken from the map?

A. I got it from the tax map.

Q. Have you got the maps here?

A. I presume it is over here.

The Master: Do not waste time with that. If it is not so, show it with the tax maps.

Q. Let me ask you this: Where you found improvements upon land was the use to which the improvements were put one of the factors in fixing the value of the improvements?

The Master: Mr. Kelly said there were some buildings over on the west side there which were absolutely vacant, were not being used at all.

A. They were not being used when I was there.

The Master: The question is ruled out because there was not any use of them.

The Witness: The only purpose that I could see was for shops, and I don't know that they are used for that. I do not know that even.

Q. If the buildings had been actually used in the actual operation of the gas business, would you have
29165 valued those buildings as they stood at that time at a greater amount than you did because they were vacant?

A. I cannot say that, because they were not used when I assessed them. It might create an impression on my mind if I went there and found the buildings occupied and found out what the rentals were. There might be some change in the value. But as I found them, they appeared to be useless; and when I increased my valuation for 1917 on the land I ripped the valuations out of those buildings, I cut them two-thirds.

Q. And that was largely because the buildings were
29166 not actually used at that time?

A. They did not appear to be of any value to the land as I examined them.

The Master: He said they added nothing to the value of the land as they stood.

Mr. Goetz: That is all.

GEORGE E. MCKENNA, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. McKenna, what position do you hold?

A. Deputy tax commissioner of the City of New York.

Q. And how long have you been a deputy tax commissioner?

A. Since June, 1910.

Q. Were you appointed to that office after a competitive examination? 29168

A. I was.

Q. And you are in the competitive schedule of the civil service?

A. Yes, sir.

Q. Have you held that office continuously during this time you have mentioned?

A. I have.

Q. Before you were deputy tax commissioner what business were you in?

A. I was a clerk in the department.

Q. And for how many years were you a clerk in the department? 29169

A. Eight years.

Q. And before that?

A. I was with a private concern.

Q. Real estate?

A. Real estate, yes.

Q. Was that concern you were with buying and selling real estate?

A. Well, they were more real estate operators in suburban developments.

Q. How long?

By the Master:

Q. Suburban developments, Mr. McKenna?

A. Yes, suburban developments down in South Brooklyn.

Q. South Brooklyn?

A. Bensonhurst.

By Mr. Chambers:

Q. Bensonhurst?

A. Yes.

Q. How long were you with that concern?

A. Oh, several years. I do not recall.

29171 The Master: You never bought or sold any machinery or gas apparatus or anything of that sort, did you?

The Witness: No.

Q. And have you been valuing property all the while you have been deputy tax commissioner?

A. Have I been doing what?

Q. Placing values upon properties for tax purposes?

A. For the City, yes.

Q. Have you moved around in different districts?

A. Yes.

Q. And you have encountered different kinds and

29172 types of buildings?

A. I have.

Q. And different pieces of land?

A. I have.

Q. Have you Block 1998, Lots 50, 53, 54, 55 and 56?

A. Yes.

Q. Were you in that district in which that block and those lots were in 1915?

A. I was in there in 1914 and assessed it for 1915.

Q. Right. So your first valuation would be as of October 1st, 1914, for the 1915 taxes?

A. Yes, a year in advance.

The Master: Were you there only one year?

The Witness: Only one year.

Q. Will you give the valuation you placed first upon Lot 50; give me the dimensions of Lot 50 as you valued it in 1914, for the 1915 tax?

A. 75 feet on the south side of 132nd Street by 99 feet 11 inches in depth to the center of the block.

Q. And what value did you place upon that lot for the 1915 taxes?

A. $22,000.

The Master: Unimproved?

The Witness: Unimproved. 29174

Q. Were there any improvements on it?

A. Yes, there was a pumping station on there. There was an improvement on that lot.

Q. And you placed a valuation upon the improvement?

A. Yes.

Q. That value you have given for that lot unimproved, was that the sum in your judgment for which the lot would sell if wholly unimproved, as of that date?

A. Yes.

Q. Was it in your judgment the full value?

A. Yes. 29175

Q. And did you arrive at that value of your own independent judgment?

A. Yes.

Q. Will you state what value you placed upon the improvement?

The Master: One minute.

By the Master:

Q. The value you placed on the improvement, did it include anything but buildings?

A. Yes, the machinery.

Q. You included the value of the machinery with the buildings?

A. Yes.

Q. You did not subdivide the buildings?

A. I have a memorandum of how I subdivided it.

Q. Give us your figure of the buildings, exclusive of the machinery?

A. $14,000.

Q. For the house in which the machinery was?

A. For the house in which the machinery was.

By Mr. Chambers:

29177 Q. Then on top of that you placed some value for the machinery?

A. For the machinery.

Q. Will you give the value of the machinery?

Mr. Goetz: I object to that.

The Master: Don't do that. Objection sustained.

Mr. Chambers: Exception.

Q. That is the only year you valued that?

A. Yes.

Q. Lot 53, the dimensions in the same year?

A. Lot 53 is 25 feet by 99 feet 11 inches. They are all vacant. Lots 53, 54, 55 and 56 were as-

29178 sessed as vacant lots.

Q. They are all of the same size?

A. All of the same size.

Q. What value did you place upon those lots for the 1915 taxes?

A. $7,000 each.

Q. You say they are unimproved?

A. At that time they were unimproved.

Q. Did you reach that value in your own judgment?

A. Yes.

Q. Is that sum for each of those lots in that year the sum for which that property would sell if wholly unimproved?

A. Yes.

Q. And was it in your judgment the full value of the land?

A. Yes.

Q. Block 1999, Lot 1. First will you give me the dimensions of that block and lot?

A. Well, on the east side of Twelfth Avenue or Riverside Drive, whichever you want to call it, it is 199 feet 10 inches; it runs along the north side of 29180
132nd Street 675 feet; then northerly 99 feet 11 inches; then west 25 feet; then north, 99 feet 11 inches; then west 650 feet to Twelfth Avenue or Riverside Drive.

Q. What value did you place upon that lot as you have described it for the 1915 taxes, unimproved?

A. Unimproved, $415,000.

Q. Did you find some improvements on it?

A. Yes.

Q. The way you have described it, it occupied the whole block?

A. No, with the exception of the Broadway front here. 29181

Q. Mr. McKenna, could you give me the Twelfth Avenue end of that block, the first 250 feet, and what valuation that would bear to the other?

A. The first 250 feet?

Q. Yes.

Mr. Goetz: I object to that on the ground that the witness, at the time he made his valuation and at the time he gave his estimate, did not make such an apportionment of the property.

The Master: Objection overruled.

Mr. Goetz: Exception.

Q. Give me the units, so I will get that.

A. $7,000 a lot.

By the Master:

Q. For the interior?

A. Fronting on the street, disregarding the avenue front. They are all on the street.

Q. How many lots did you have in this section?

By Mr. Chambers:

Q. On this Twelfth Avenue, how many lots did you have?

A. I fronted them on the street.

29183 Q. How many fronting on Twelfth Avenue?

A. Four.

By the Master:

Q. You did not take any Riverside lots at all?

A. I did not.

Q. You took four on the street and went back how many feet?

A. 250 feet.

By Mr. Chambers:

Q. I want just the 250 feet.

A. All the way through?

Q. Yes, for this whole corner.

A. That would be twenty lots.

29184 Q. And how much would that make, the relative proportion?

The Master: $140,000.

A. $140,000.

The Master: Did you add any plottage?

The Witness: Yes, sir; I would have added plottage ten per cent.

Q. That would be $140,000 plus ten per cent?

A. $154,000. By the way, excuse me, there would be a corner lot added there.

Q. How much more for that?

A. $7,000.

Q. If we have computed this correctly, that makes $161,000 for that part of the lot fronting on Twelfth Avenue, 250 feet deep?

A. Yes.

Q. Running clear across 132nd Street?

A. From 133rd to 132nd Street.

Q. And in your judgment would that sum be the sum for which that part of that lot would sell if wholly unimproved as of that date?

Mr. Goetz: I object to that.

A. Yes.

Q. Were there improvements on this piece of property? 29186

A. As far as I recollect, yes.

The Master: What were they?

The Witness: A gasometer, a holder or tank, whatever you want to call it.

Q. Nothing else but the tank?

A. That is all I recollect seeing there.

Q. Have you any idea what part of the lot that was on?

A. Close to the Twelfth Avenue side there. It would go back, I should imagine—I should judge it would be on that plot 250 by 199. It is 190 feet in diameter, or something like that. 29187

Q. To the best of your recollection probably all on that plot I asked you to give me the figure for?

A. Yes, the diameter of the holder would be 190 feet.

Q. You placed a valuation on the holder, did you?

The Master: Do not give the valuation of it, just say whether you did or not.

A. I did.

Q. You examined it and looked it over?

A. Yes.

Q. And you found its cubical contents?

A. Yes.

29188 George E. McKenna, Cross.

By the Master:

Q. What was its capacity?

A. As far as I calculate and from evidence I found it 5,000,000 cubic feet.

Q. And you multiplied that by a unit per cubic foot?

A. Yes.

Q. That was the unit established in the department?

A. Yes.

By Mr. Chambers:

29189 Q. Are you able to say now what the value of that holder was?

Mr. Goetz: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Will you give the value you placed upon the holder?

Mr. Goetz: I object to that.

The Master: Objection sustained.

Mr Chambers: Exception.

Q. Have you any others, Mr. McKenna?

A. Have I what?

29190 Q. That we asked you to give?

A. That is all.

Mr. Chambers: That is all.

Cross-examination by Mr. Goetz:

Q. In valuing the improvements on Block 1908, Lot 50, did you value those improvements with respect to the reproduction cost of the property or the selling value of the property?

The Master: That building included some apparatus and machinery.

A. Well, naturally I would say on the value a willing buyer and a willing seller would sell it for.

Q. Not what it would cost to rebuild it at that time?

A. No.

Mr. Goetz: That is all.

OSCAR C. NAUMAN, recalled as a witness for the defendants, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

The Master: He has been sworn and stated his qualification. 29192

Q. You stated how long you have been in the Tax Department?

A. Twenty-five years.

Q. Have you valued land and land with improvements during all those years?

A. I have.

The Master: What position did you occupy in the department?

The Witness: I was chief deputy for five years, and during that interval I did not do any assessing personally.

Q. Have you kept track of the sales of improved and unimproved property in the City? 29193

A. Yes.

The Master: We have had all that.

Mr. Chambers: Did we, about improvements?

Q. Sales of improved real estate in the City you kept track of?

A. Yes, sir.

Q. And mortgages on them?

A. Yes, sir.

Q. And new pieces of property that were being built?

A. Yes.

Q. And have you been operating in several tax districts?

A. Various ones.

By the Master:

Q. You never bought or sold any machinery, did you?

A. No.

Q. You never bought or sold any gas apparatus or gas holders?

A. No.

Q. Except as you have got the best information you
29195 could to fix the values of such improvements, you do not undertake to say that you are an expert on the value of machinery, do you?

A. Not other than as I am an expert in real estate with the Tax Department.

By Mr. Chambers:

Q. Your experience has been acquired in the Tax Department?

A. In the Tax Department.

Q. Block 689, Lot 17. Have you that?

A. Do you want the map, Mr. Chambers?

Q. What year did you begin?

A. I was in that district ten years.

29196 Q. You visited this block and lot each year before you assessed the value?

A. Yes, sir.

The Master: And every other lot that you assessed?

The Witness: Yes, sir.

Q. Did you reach the value of it from your own independent judgment?

A. My own judgment.

Q. Mr. Nauman, will you give me the dimensions first of that Lot 17, Block 689, as you found it in 1905, for the 1906 tax?

A. 184 feet on Tenth Avenue, running back 450 feet 11 5/8 inches on 18th Street; 379 feet 10 5/8 inches on 17th Street an angle on the westerly side.

Q. And in all of those assessments you are going to give me up to 1911, it was the valuation as of the second Monday in January?

A. As of the second Monday in January.

Q. Now, give me the valuation you placed upon that lot as of the second Monday in January, wholly unimproved first.

The Master: Let Mr. Nauman stand aside and get one of the other men while you are locating those books. 29198

MICHAEL H. KINSLEY, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. You are a Deputy Tax Commissioner, Mr. Kinsley?

A. Yes, sir.

Q. How long have you been such?

A. Twenty-two years. 29199

Q. And did you try a competitive examination?

A. I did.

Q. And were you appointed to the office after such examination?

A. Yes.

Q. And took an oath?

A. Yes.

Q. Been acting ever since?

A. Yes.

Q. Before that, what were you doing, what business?

29200

A. I was field clerk in the department ten years prior to that.

Q. And before that?

A. I was in the Federal service prior to that, in the Postal Department.

Q. Have you kept track of the sales of improved real property in the city during the time you have been in the Tax Department?

A. Yes, in the districts I was connected with.

Q. And watched out for mortgages on property?

A. Yes.

29201

Q. And buildings in the process of construction in your district?

A. Yes.

Q. And you are familiar, are you, with the values of improved real estate, unimproved and improved real estate?

A. Yes, in the districts assigned to me.

By the Master:

Q. When you were assigned to a district, I suppose you made all the inquiries you could to get a line on values in that district?

A. Yes.

29202

Q. You never handled machinery or gas works or gas holders, or bought or sold them or built them, or anything of that sort, did you?

A. No.

Q. And when you appraised gas holders, you took that factor established by the department on the cubic contents of gas holders, so much a cubic foot?

A. Yes.

Q. And in valuing machinery, you got all the information you could from inquiry made of people?

A. Yes.

Q. Records of the department?

A. Yes.

Q. And things of that sort, is that correct?
A. Yes, sir.
By Mr. Chambers:
Q. Any values that you placed upon that property I am going to ask you about, did you reach the value from your own independent judgment?
A. Yes.
The Master: Any property you appraised, you used your best judgment?
The Witness: In my own judgment.
Q. Lot 23, Block 2108, for the tax of 1909, unimproved, Mr. Kinsley, give me the dimensions first on 29204
West 159th Street, how many feet?
A. 50 feet front by 100 feet in depth.
Q. You visited that block before you assessed it?
A. Yes, sir.
Q. For the 1909 tax?
A. Yes.
Q. What value did you place on it for the 1909 tax, unimproved?
A. My notice is for 1910, not 1909.
Q. Well, did you assess it in 1909?
A. For 1910, yes.
Q. But you did not assess it in 1908 for 1909?
A. Yes. 29205
Q. Have you got the 1909 tax?
A. Not here.
Q. Well, give me the 1910.
A. Land $14,000 unimproved.
Q. Now, 1911.
A. $16,000.
Q. 1912.
A. $19,000.
Q. 1913.
A. The same.
Q. 1914.
A. $20,000.

29206 Michael H. Kinsley, Direct.

Q. 1915.

A. $20,000.

Q. Now, these sums that you have just given me, are those the sums which, in your judgment, that piece of property would sell for if wholly unimproved at those times?

A. Yes, sir.

Q. Now, the 1910 tax, your valuation was as of the second Monday in January?

A. Yes.

Q. In 1911, when was it then, the first Monday in

29207 October?

A. The second Monday of January.

Q. 1911, the second Monday of January?

A. I think so, to the best of my recollection.

Q. And that is the year you assessed it twice?

A. I think you are right on that, but I will have to refresh my recollection.

Q. There was a change there, the 1912 tax was undoubtedly the 1st of October, your valuation, that is, the first Monday of October, 1911, for the 1912 tax?

A. I am not sure what year that was made for now, but there was one year we assessed twice, for two years.

29208 Q. But in 1913 that was for the first Monday of October?

A. Yes.

Q. And 1914?

A. Yes.

Q. 1915?

A. Yes.

Q. Now, were the values that you have given for that lot unimproved the full value of the lot in your judgment during those times?

A. It was.

Q. Now, any improvements on there during those years?

A. Yes.

Q. What improvements in 1910, the 1910 tax?

A. A four-story building 50 by 95.

Q. Did you look it over each of those years?

A. Yes.

Q. What value did you place on that building for the 1910 tax?

Mr. Vilas: Objected to unless it appears that it was not a technical building full of machinery.

The Master: You did not include machinery in the valuations, did you? 29210

The Witness: No.

Q. What was it used for, do you recall?

A. It was used for—in 1910 it was used for a repair station, auto emergency station, it might be called.

Q. Give me the value, will you, for the 1910 tax?

Mr. Vilas: I still object to it unless it appears whether or not he included machinery and similar contents of the building.

The Master: I asked him and I think he said no.

The Witness: I said no. 29211

Q. You did not find any machinery in there to value, did you?

A. Only of a small portable character.

Q. None of value?

A. No.

Q. Now, give us the value?

A. $34,000 total, leaving a building value of $20,000.

Q. Now, 1911, value of the buildings?

A. $19,000.

Q. Same building?

A. Same buildings.

Q. 1912?
A. $18,000.
Q. Same building?
A. Same building.
Q. 1913?
A. $18,000.
Q. Same building?
A. Yes, sir.
Q. 1914?
A. $20,000.
Q. Same building?
29213 A. Same building.
Q. 1915?
A. $20,000.
Q. Same building?
A. Same building.
Q. And there was nothing else on that lot by way of improvements that you valued?
A. No.
Q. And that included all the improvements that you valued on there for tax purposes?
A. That is right.
Q. And included all the improvements by way of fixtures to the realty, didn't it?
29214 A. Yes, included all of those fixtures I thought were assessable as real estate.
Q. You did not assess any of the personal property?
A. No.
Q. And those improvements which you have given for those years—give me the totals now, will you, for each year, improved and unimproved?
A. For 1910?
Q. Yes.
A. $34,000; 1911, $35,000; 1912, $37,000; 1913, the same; 1914, $40,000; 1915, $40,000.

Q. Now, those sums that you have given for that property with all the improvements on it, land and improvements, is that the sum which, in your judgment, it would have sold for under ordinary circumstances on those dates?

A. It is.

Q. And was it in your judgment the full value of the property with the improvements?

A. It was.

Q. Have you any other lot, Mr. Kinsley?

A. Of the companies?

Q. Yes, that you looked up for us? 29216

A. No, that is the only one.

CROSS-EXAMINATION BY MR. VILAS:

Q. Mr. Kinsley, this building that you found on the property was a brick building, was it?

A. Brick building.

Q. How many stories?

A. Four.

Q. You valued it on the square foot basis?

A. A square foot basis, yes.

Q. Applied to it a unit?

A. Why, yes.

Q. Which had been agreed upon by you and other deputies as the proper unit to apply to a building of 29217 that character?

A. Of that character. Well, the factor was established by consultation with various types of buildings so we would be familiar with the various types of building and in harmony.

Q. Did you participate in the conferences and consultations through which this factor was established?

A. I would not say that there were any conferences in which those factors were established, it was more of an informal understanding, a conversation rather than any conference.

Q. Well, there was no formal action taken by the board to furnish you with the information as to what factors to use?

A. No, sir.

Q. You used the factor here which was understood among the deputies to apply to buildings of that character, is that right?

A. There was no binding factor, it was the factor that might in your own judgment apply to the value of that building.

Q. I understand there was no binding agreement,
29219 but these factors were established for the sake of securing uniformity in the assessments, were they not?

A. Established by whom?

Q. By the deputies among themselves?

A. There was no establishment about it. Why, there would be so many characters of buildings and so many types of buildings, that your factors would be very extensive, I imagine.

Q. Well, what was the purpose of the conferences and consultations that you spoke of?

A. You used the word conference. I said that we had often talked over the matter as to the value of a building of various types.

29220 Q. You used the word consultation, I did not bring it up?

A. The word conference I said.

Q. Well, forget the conference, and stick to your own word consultation. Now, did those consultations result in arriving at any factors which were either directly or tacitly agreed upon as the proper factors to apply to buildings of a given character?

A. They were talks among the men that would bring out what a building would be worth at that particular time.

Q. What was the factor you applied to that building?

A. For which year?

Q. The year 1910?

A. Well, that is $20,000, that would be slightly over a dollar.

Q. A little over a dollar?

A. Slightly over a dollar.

Q. Was it understood among the deputies at that time that that amount was the proper amount to apply to a building of the character of the one you found there? 29222

A. There wasn't any consultation bringing that factor out.

Q. There had been none?

A. No, not so far as reaching a specific building, no.

Q. Where did you get this factor of a dollar and something?

A. My judgment of what that building added to the land at that time.

Q. It had not been given to you by anybody else or any other board?

A. Oh, no.

Q. It was your opinion at that time that the amount 29223
that you stated represented the cost to reproduce that building at the time?

A. No, sir, it was not.

Q. Was it more or less?

A. It was what the value of the building added to the plot at the time, not what it cost to reconstruct.

Q. You have stated that the improvements were worth $20,000, and the land $14,000 in 1910. Those are the two figures you have given?

A. Yes, sir.

Q. Was the sum $20,000 more or less than it would have cost to reproduce the building at that time?

A. I presume it was less.

Q. You think it was less?

A. Possibly less.

Q. In arriving at the figure did you allow for depreciation?

A. I believe that was reflected in the value placed on the building.

Q. It was reflected in the valuation or in the fac-
29225 tor?

A. What is the difference?

Q. Considerable difference in my mind.

A. I can't see it.

Q. You can't see it?

A. No, sir.

Q. All right. Now, the year following the same improvements were valued at $19,000. Did you apply a different factor there, or did you find depreciation of the building that caused that change of value?

A. A slight lowering of the building value.

Q. It was a lowering of general values which
29226 caused that difference, is it?

A. A lowering of general values?

Q. General building values?

A. No.

Q. Nothing that specifically related to this property, or something that was generally affected in all the City?

A. It was a slight increase in the land value and there was a slight decrease in the building value for 1911.

Q. The same thing took place the next year, when you reduced the building value to $18,000 and raised the land value to $17,000?

A. A similar condition.

Q. Did that condition apply alone to this item of property or did it apply to property generally in that locality?

A. The land value was applied to all the property in that general territory.

Q. What about the building values?

A. Every building had to be treated by itself; there are no two buildings standing by each other that are 29228
exactly alike.

Q. Did you reduce that building for 1911 and 1912 because you found that the building had depreciated in value?

A. In my judgment, yes.

Q. Was that depreciation in value due to the condition in which you found the building, or to general conditions?

A. The condition of the building.

Q. In what respect did you find it less valuable than you had found it the year before?

A. Simply the building had depreciated by age, that was all. By the increase of land value, a build- 29229
ing of that type was not as valuable on that as probably a more suitable building would be.

Q. In other words, if the value of the land on which a building stand increases does the value of the building decrease?

A. Yes, sir, if it is unsuitable for the land.

Q. In what respect was that unsuitable for that property?

A. That is an apartment house district.

Q. The building was not unsuitable for the use to which it was put, was it?

A. It was unsuitable to the purposes for which it was used?

Q. Yes.

A. No, it suited the purpose very nicely.

Q. And was kept in good repair, wasn't it?

A. Yes, sir.

Q. There wasn't any falling off in the condition of the building or the condition in which it was maintained?

A. Not particularly, no.

Q. Was there any?

29231 A. There would be some by the increasing age of the building, wouldn't there?

Q. I am asking you?

A. I would say so, to that extent.

Q. Would you say if a building was a year older that it had less value?

A. Yes, sir.

Q. You do then recognize depreciation by reason of age in your valuations?

A. Yes, sir.

Q. Then how do you account for the fact that in 1914 you raised the building, the value of the building $2,000?

29232 A. Because two years prior thereto, or thereabouts, they did considerable strengthening inside of the building.

Q. They made repairs to the building?

A. They made strengthening repairs.

Q. And improved the building to that extent?

A. Yes, sir.

Q. In what year was that done?

A. The repairs and renovations were begun in 1910.

Q. They were begun in 1910?

A. Yes, sir.

Q. When were they completed?

A. They were scattered along through the period of a couple of years.

Q. Finished in 1912 were they?

A. So far as I discovered them, yes.

Q. But you did not raise the value on that account in 1912, you kept it at $18,000 for the buildings?

A. The appraisal of the 1914 value, I made a special inspection of the building, and found that the value had been increased to that extent by the renovations which had taken place.

Q. You did not discover those renovations and 29234
increases in value until your inspection of 1914?

A. It did not occur to me to increase its value until I made that particular inspection in 1913.

Q. In 1913, while you were doing field work for the 1914 assessment, you made an unusual inspection of that building?

A. Yes, sir.

Q. More minute than you had in previous years?

A. Well, slightly so.

Q. And by reason of that inspection you discovered some improvements which caused you to increase the assessment on that building?

A. Right. 29235

Q. Did you take into consideration in fixing these amounts on that building the possible rental value of the building?

A. For what purpose?

Q. For any purpose.

A. The rental would be very much different according to the purpose for which it might be used.

Q. Well, for the best purpose for which the building could be used, what we used to call in the west, the highest and best use.

29236 Herman Schumacher, Direct.

A. The rental of that building would be unusual there. I would not fix it on a rental basis at that time, because there wasn't any way of determining the factor based on its rental income at that time.

Q. You did not determine it on a rental basis then?

A. No, sir.

Q. You determined it squarely on a factor multiplied into the area?

A. Together with the land value.

Q. Together with the land value. I am speaking
29237 now of the improvement values.

A. Yes, sir.

Mr. Vilas: I think that is all.

(Witness excused.)

HERMAN SCHUMACHER, recalled as a witness in behalf of the defendant Newton, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Did you testify before?

A. Yes, sir, in September, I believe.

29238 Q. How long have you been in the department assessing real estate with improvements on it?

A. Since 1898. The first assessment I made was for the year 1899, twenty years ago.

Q. What business were you in before you entered the department?

A. I was a clerk in the Department of Taxes and Assessments for five years.

Q. And had to do with real estate?

A. Yes, sir, I did clerical work and assisted the deputy with whom I was associated in fixing values.

Q. Before that, what business were you in?

A. I did clerical work.

Q. Have you during the time you have been in the Tax Department had occasion to keep track of sales of real estate, improved?

A. Yes, sir.

Q. In New York City?

A. Yes, sir.

Q. Have you operated in several of the different tax districts where property is valued?

A. You mean did I buy and sell property?

Q. No, have you worked in different districts? 29240

A. Yes, sir.

Q. Have you ever bought and sold any real property?

A. Yes, sir.

Q. Whereabouts?

A. In the Borough of Manhattan and the Borough of the Bronx.

Q. To some extent?

A. Not to a great extent, no, sir.

Q. Are you familiar with the values of real estate in New York City, real estate with improvements on it?

A. In certain sections, yes, sir. 29241

Q. Are you familiar with them in the section of Block 2108?

A. Yes, sir.

Q. Have you kept track of the mortgages on real estate in the districts in which you have operated?

A. Yes, sir.

Q. And rentals to some extent and leases?

A. Wherever obtainable, yes, sir.

Q. And as a result of all this information, you have used that in fixing the value on this property I am going to ask you about?

A. Yes, sir.

Q. Did you visit this Block 2108, Lot 23, before you assessed it?

A. Yes, sir.

Q. What year did you begin with?

A. The first valuation I placed on this property was for the year 1919.

The Master: Taxable year 1919?

The Witness: Yes, sir.

Q. Did you testify for the complainant as to the value of the land?

A. Yes, sir.

29243 Q. That lot for 1919?

A. Yes, sir.

The Master: Where is that?

The Witness: That is on the south side of 159th Street between St. Nicholas Avenue and Edgecomb Road.

Q. Give the dimensions of it as you assessed it in 1919?

A. The size of the lot is 50 by 100.

Q. Was that assessment for the 1919 taxes?

A. Yes, sir.

Q. You visited it and looked it over?

A. Yes, sir.

29244 Q. Before you assessed it?

A. Yes, sir.

Q. Give the value you placed on it, will you, for the 1919 taxes?

A. The land value was $21,000.

Q. Was that the value in your judgment, or the sum for which that property would sell as of that date if wholly unimproved?

A. Yes, sir.

Q. Was it its full value, in your judgment?

A. Yes, sir.

Q. What improvements did you find on it?

A. Four-story brick building 50 by 95, used as a meter shop.

Q. Did you place a valuation upon that building without its contents?

A. Yes, sir.

Q. Did you look it over and see what it was made of and how it was made and what the roof was?

A. I didn't look at the roof, no, sir.

Q. You looked the building over?

A. I looked it over from the outside, and the ground floor. 29246

Q. Then you placed a valuation upon it?

A. Yes, sir. I estimated the building at $32,000.

Q. The total of the lot unimproved, and the building, amounts to how much?

A. $53,000.

Q. Now, that sum which you have given, or those sums that you have just given, are those the sums for which in your judgment that property would sell under ordinary circumstances?

A. That is not the total assessment on the property.

Q. What else?

Mr. Vilas: Let us see what it is before we get the figures. 29247

Q. Don't give me the figure, just state what else was on it. What did you assess in addition to the land and buildings?

The Master: Was there anything else you had to figure beside the building?

The Witness: There might be some machinery in it.

The Master: In what?

The Witness: In the building.

The Master: Did you figure the machinery, did you put a value on the machinery?

The Witness: The balance of the value must be for the contents.

The Master: All right, then there was a balance?

A. Yes, sir.

The Master: There was a balance, the difference between the building value and the total?

The Witness: Yes, sir.

Q. Now, confining yourself to the value of the
29249 land you have given, unimproved, and the value of the building, excluding the contents, machinery, whatever it was, is that the sum for which in your judgment that property would sell under ordinary circumstances at that time?

A. You mean the value of the land?

Q. And the building, excluding the contents?

A. Yes, sir.

Q. Can you state in detail what else you assessed there, what the machinery was, what kind of machinery?

A. I cannot, because—

By the Master:

29250 Q. How much a square foot did you figure on that building?

A. About $1.70. It figures out exactly $1.68, I think.

Q. You took $1.70 as the basis?

A. It figures $1.68.

Q. Did you say the building was 50 by 95?

A. Yes, sir, four stories high. That would be 19,000 square feet.

Q. You figured on 19,000 square feet of floor space?

A. Yes, sir. $1.68, I think it figures out.

Q. How did you get that factor?

A. That in my judgment I considered the proper factor to put on that character of a building. That is the factor that I would use on a similar building in any other part of the district.

Q. That is the factor that you had in mind for that kind of a building?

A. That is what I thought was the proper factor and proper value.

By Mr. Chambers:

Q. That was your own judgment about it, was it?

A. My own judgment. 29252

By the Master:

Q. What was the department's factor for that kind of a building?

A. Well, they give us factors on apartment houses and loft buildings where there is more similarity; but on a specific building like this—in all cases we use our own judgment anyway.

Q. What buildings do they give you factors on?

A. Principally on tenement buildings, and loft buildings.

Q. And office buildings?

A. Office buildings, and probably on a two-family frame. 29253

Q. All of these valuations are made upon a square foot area?

A. That is the way I estimate my buildings, yes.

By Mr. Chambers:

Q. These factors given you by the department are only by way of suggestion or aid?

A. In an advisory capacity, yes.

Q. And those were worked out with a good deal of care, were they not?

A. Yes, sir.

Mr. Vilas: I object to the testimony of Mr. Chambers.

The Master: You have gotten the value he put on that building. I suppose you want to know now the value he put on the contents.

Mr. Chambers: Yes.

Mr. Vilas: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. You are not able to state just exactly what the contents were?

29255 A. The company knows more about that than I do.

The Master: Some sort of machinery, I suppose, boilers, etc.?

The Witness: I took into consideration their statement that they made to the State Tax Board, and I believed the statement they made, and I gave it a good deal of credence.

Mr. Vilas: I object to that.

The Master: Where did you see their statement to the Tax Board?

The Witness: Why, we receive a copy of it —the statement is sent to us from the State Tax

29256 Commissioners in June of each year for the year ending December 31st preceding.

The Master: You mean you get some sort of statement from the person in charge of your department, some information from the State Tax Department?

Mr. Chambers: No, I know what it was.

Q. Now, Mr. Schumacher, what you got handed to you was the original Schedule S of the duplicate report filed with the State Board of Tax Commissioners, wasn't it, and didn't you put your initials on

it after you looked at it and used it? See if that is not correct.

Mr. Vilas: If there ever was an example of testimony being shoved into a witness's mouth I think this is a signal example of it.

The Master: I will sustain the objection. There is so much dispute as to what that is that I will not take a leading question.

Q. State exactly what you used in regard to that, and all about it?

A. It is the Form S statement that the company submits to the State Tax Commissioners each year, 29258
which is sent to us the following June. We look it over. I took recognition of that, and I gave that consideration when I fixed my value for the year 1919.

Mr. Vilas: I object to the statement of the witness and move that it be stricken out as purely hearsay.

The Master: Motion denied. I won't take his statement of value. If any report was made by the company the company is bound by it as an admission against interest, and I will take the report.

Mr. Vilas: The report is the best evidence of 29259
what is in it anyway.

Q. I ask you to give the value of the contents?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you put your initials on this Schedule S?

Mr. Vilas: Objected to. What difference does it make if he did?

Mr. Chambers: Because I am going to bring them here in a little while.

The Master: I will sustain the objection.

Mr. Chambers: Exception.

Q. Have you got the 1920 tax assessment on that lot and building for 1920?

A. I haven't got the book, but it is the same; the valuation is the same.

Q. As for 1919?

A. Yes, sir.

Q. And your answers as to the 1920 tax would be the same in all respects?

A. Yes, sir.

Q. That is your valuation would be the sum for which that property would sell in your judgment
29261 under ordinary circumstances, both the value improved and unimproved?

A. Yes, sir.

Q. Did you value the contents of the building for the 1920 tax?

A. In a similar manner.

Q. I ask you to give it.

Mr. Vilas: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception. That is all.

CROSS-EXAMINATION BY MR. VILAS:

Q. Mr. Schumacher, was the assessment you made for 1919 the first year you ever assessed that prop-
29262 erty?

A. That is the first year I assessed that property, yes, sir.

Q. Was it the first year you were on that district?

A. Yes, sir.

Q. You were not familiar with it in prior years?

A. Only from my general knowledge of real estate while I was in the department.

Q. You had not made any specific inspection of that particular property had you before the fall of 1918, or the season of 1918?

A. No, sir.

Q. You had before you the assessments of your predecessors on that property?

A. The field book which I used contained that.

by the Master:

Q. How did you make this figure of $1.68; how did you arrive at that? Tell me how your mind worked to figure $1.68?

A. That is the value I used.

Q. Why did you use $1.68 rather than $1.38; what basis was there for the $1.68? There must have been something in your mind to reach that $1.68?

A. We generally put a factor of about from $1.50 29264
upon a building of that kind.

Q. Why $1.50 up? What does that mean?

A. That is what I figured it would cost to construct—not what it would cost to construct, but what I thought it was worth. It would probably cost more to construct. That is, there is a certain amount allowed for depreciation. It is not a new building and that is what I put the value on.

Q. I know you thought that, but what I want to know is how you come to take a factor of $1.68; what does that mean? It means nothing to me unless I can see where you get it from.

A. It means just the same as if you figured good 29265
apartment houses at $2.00 or $1.50.

Q. That does not mean anything at all to me either.

A. It is the judgment of the man.

Q. Why should you take $2.00 or $1.50 for an apartment house, what does that represent?

A. Well, you figure that the land is worth so much and the building so much, and that the improvement will have to bring a certain amount on the investment, a certain income on the investment.

Q. Where does that land us on $1.68? Take this meter shop building on 150th Street or whatever it

is. You go up there and look at it and you say well $1.68; where do you get it, do you pick it out of the air?

A. No, if the building was new I would probably put $2.00 on it.

Q. Why $2.00?

A. Because I consider that is what the building would cost to construct it new.

Q. $2.00 a square foot?

A. Yes, new.

Q. New?

29267 A. New, yes.

Q. Your statement is in your opinion it would cost $1.68 a square foot to build this building?

A. What I thought it was worth; what I thought it was worth at that time, about.

Q. Do you mean that is what it would cost to build?

A. No, sir, I do not mean that is what it would cost to build.

Q. How much would it cost to build?

A. I figure a building like that would cost about —at that time it would cost probably $2.00.

Q. $2.00 a square foot?

29268 A. $2.00 a square foot.

Q. To build?

A. Yes.

Q. What makes you think so?

A. From my general knowledge in the Building Department.

Q. Where do you get it in the department?

A. Assessing the various districts.

Q. Let us see. How deep are the foundations?

A. I do not know.

Q. What kind of a bottom is there to that building?

A. The land, you mean?

Q. Don't you know what the bottom is? Under the foundation, is it rock?

A. No, there was no rock. There is not any rock there.

Q. Is it on piles?

A. I don't know.

Q. Is it filled in?

A. Well, I could not say that.

Q. Is there a stream running through there?

A. Not that I know of.

Q. How many cubic feet of foundation work is there? 29270

A. Well, let me see—

Q. Well, you do not know how deep the foundation is, do you?

A. No, I don't.

Q. Then how can you figure? How thick are the foundation walls?

Mr. Chambers: Well, did you know at the time?

Q. Yes, did you know at the time how thick the foundation walls were, or how far down they went?

A. No, I did not.

Q. Did you know how thick the first story of the brickwork was, or the side walls? 29271

A. Not when I was estimating it.

Q. Or the second story?

A. I imagine there was 12—

Q. Do you know? 12 inches?

A. Twelve inches.

Q. The first story of a four-story building?

A. The upper story.

Q. What was the first story?

A. I should judge that would probably be about eighteen inches.

Q. Did you figure that at all?

A. I took the building as a whole.

Q. No, but did you ever sit down and figure what it would cost to put up a building like that, and say, "Now that is rock there, it runs down twelve feet and we can carry the foundation easy to twelve feet, and we won't have much excavation to do," or that there was rock up pretty much to the surface, as there sometimes is, or that you would have the blast out 10 or 15 feet—did you figure that at all?

A. Well, the blasting of the rock I would not fig-
29273 ure in the cost of the building.

Q. You would not figure that?

A. No.

Q. What did you figure in that $1.68?

Mr. Chambers: May I say on the record that this sounds like cross-examination that ought to be conducted by complainant's counsel and not the Master.

The Master: I do not care how it should be conducted; I want to know how he got the $1.68.

Mr. Chambers: I object to the examination of the Master.

29274 The Master: If it is improper for the Court to find out what the fact is, it is pretty near time for the Court to shut up shop.

Mr. Chambers: I take an exception.

Q. Wasn't this $1.68 the factor given you by the department, either $1.75 or $1.65 or something around there, from which you added or subtracted something because of the peculiar conditions of this building?

A. As I said before, if the building was new I would figure it at about $2.00.

Q. Was $2.00 the factor in the department for a new building of that type?

A. That would be it.

Q. The factor for a new building?

A. About what would be used. Of course, it all depends on the man who assessed the property.

Q. What I am trying to get at is this, Mr. Schumacher: Don't you when you go out to value this or any other building, start out with the proposition that the department had worked out a factor for you, and apply that factor, modified in the light of the particular building as you saw it? 29276

A. As I said before, that is the factor I would use if it was new, about $2.00.

Q. Why would you use $2.00?

A. Well, that is the factor that ordinarily would be used.

Q. Don't you see what I am trying to find out, Mr. Schumacher—why you used $2.00?

Mr. Chambers: Well, does the Master say $2.00 is not fair?

The Master: I have not the slightest idea.

Mr. Chambers: Or that $1.68?

The Master: I have not the slightest idea,

Mr. Chambers: I do not know the thickness of 29277 the walls, I do not know the depth of the foundation, I do not know the soil; I do not know whether there was any rock condition, I do not know what kind of beams they had, floor beams, or whether they had fireproof beams, or just what kind of a building it is. I am as ignorant of the condition there as any person can possibly be, and that is why I am trying to get from Mr. Schumacher the basis on which he took $1.68.

Mr. Chambers: Well, he has been at it for years, and he has fixed in his mind a value that

29278 Oscar C. Nauman, Recalled.

is proper from all his experience in the value of buildings.

Mr. Vilas: We would like to find that out.

The Master: Don't waste any time on that.

Mr. Vilas: Just one or two questions suggested by your examination.

CROSS-EXAMINATION BY MR. VILAS:

Q. Mr. Schumacher, the valuation of $32,000 that you placed on there, divided by the area of the four floors, produces $1.68, does it not?

A. That is the way I figured it, yes, sir.

29279 Q. If you used a factor of $1.70 you would get $32,300 for that floor area, would you not?

A. Yes, sir.

Q. Isn't it a fact that that is what you did and that you took off the 300 and made a round figure out of it?

A. Yes. I will say yes to that.

Mr. Vilas: That is all.

Mr. Chambers: That is all.

OSCAR C. NAUMAN recalled:

29280

BY THE MASTER:

Q. Give us the land value?

A. Block 689, Lot 17, land value $285,000.

Q. For what year?

A. 1906.

By Mr. Chambers:

Q. What lot and block are you giving?

A. 689, Lot 17.

Q. Can you give me the dimensions of it?

A. I gave you those before, Mr. Chambers. Do you want them again?

The Master: No, I don't want them.

Q. That is Block 689, Lot 17?

A. Yes.

Q. The valuation for 1906 you gave—1906 taxes?

A. Yes.

Mr. Vilas: Unimproved?

Mr. Chambers: Unimproved.

The Witness: Unimproved, $285,000.

Q. 1907?

A. In 1907. I have not got it. I can give you 1908 up.

The Master: The witness has not got his 29282
book for 1907 now.

The Witness: I have 1908, but no 1907. 1906 we have. Yes, for 1907 land value $285,000.

Q. 1908?

A. We have the total valuation in that year, but not separated.

Mr. Vilas: What year?

The Witness: 1908.

Mr. Vilas: Did you give the total valuation?

The Witness: I have given the total valuation.

Mr. Vilas: I move that it be stricken out.

The Master: He did not give it.

Mr. Vilas: He did for that one. He gave 29283
it.

Q. What improvements were on it in 1908?

A. It is marked covered, two-story brick building.

Q. Is that the only improvement that you valued in 1908?

A. That is the only one.

The Master: Any machinery in it?

The Witness: No record of any machinery.

Q. What value did you place on the lot with that improvement on it?

Mr. Vilas: I object to that.

A. Total?

Q. The total.

Mr. Vilas: Exception.

A. $335,000.

Q. You cannot segregate the building from that?

A. No.

Q. 1909?

A. The same thing, $335,000.

Mr. Vilas: Is that total?

Q. You cannot separate the building and the land?

29285 Mr. Vilas: I object to that.

The Master: Objection overruled. Mr. Nauman said that he included in that a two-story building that covered the plot.

Q. Next year?

A. $335,000.

Q. That is for the 1910 taxes?

A. 1910 taxes.

Q. 1911?

A. $465,000.

Mr. Vilas: Is that separated or not?

The Witness: Total.

By the Master:

29286 Q. Is that for buildings and land?

A. Buildings and land.

Q. No machinery or fixtures?

A. No record of machinery or fixtures.

By Mr. Chambers:

Q. Can you separate it?

A. I cannot separate it, no.

Q. I have asked you for 1906 to 1911, inclusive. Was the valuation as of the second Monday of January in each year?

A. As of the second Monday in January.

Q. Would it be possible for you to separate the buildings and the land, from any notes?

A. No notes. One moment, I may have a memorandum here. Yes, I think I can (examining book).

Q. We thought you had it.

A. $156,000.

Q. Can you go back to 1906 and separate it?

A. I presume that covers it in the range of years.

Q. It was all the same?

A. There is only one calculation here and that covers them all.

Q. 1908, 1909, 1910 and 1911? 29288

A. 1908, 1909 and 1910.

Q. Give me the value first for those three years separate from the buildings. For 1908, now?

A. 1908, $234,000 for the land.

Q. $234,000?

A. $234,000.

Q. That makes the building how much?

A. $156,000.

Q. That is the same for 1908?

A. Well, this does not apply, no, to those years. That will apply only to the years 1911 up.

Q. We have here, Mr. Nauman, by way of suggestion for you, for the land for 1908 and 1909 and 1910, $310,000? 29289

Mr. Vilas: I object to the leading questions of that kind.

The Master: I will let him help Mr. Nauman try to get the correct figures.

Q. How about this $310,000 for those three years just for the land?

A. I can only assume—I can deduct the value of the building, assuming it was the same in the previous years, from that total of $335,000.

29290 Oscar C. Nauman, Recalled.

Q. What does that give?

A. $179,000.

Mr. Vilas: That is something you cannot swear to as having been placed on the property at that time, can you?

The Witness: I cannot swear whether these are my figures, that I based my calculation on that.

By the Master:

Q. These figures would indicate your valuation for 1910 and '11, but not for the prior year?

29291 A. No.

Q. You are not prepared to tell us what your distribution was between land and buildings for the prior years?

A. I would not swear to it, no.

By Mr. Chambers:

Q. And you have no notes there that would indicate?

A. No.

Q. Now, the sum which you have given for that Lot 17, Block 689 for 1906 and 1907, is that the sum in your judgment which that lot would sell for if wholly unimproved as of those dates?

29292 Mr. Vilas: He has not given us any 1911 figure.

Mr. Chambers: I did not say 1911; I said 1906 and 1907.

A. Yes, sir.

Q. And was it its full value in your judgment?

A. Yes, sir.

Q. Of the land unimproved?

A. Yes, sir.

Q. Now, the values that you have given for that lot, the total value for the lot in 1906 and 1907, the

land value plus the improvements value which you gave, is that the sum which in your judgment that property would sell for with those improvements on it as of that date?

Mr. Vilas: That is objected to, if your Honor please. I do not think there is any proof of any proper figure before the Court.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. Yes, sir.

Q. Didn't you give me the value of the buildings separate for 1906? 29294

A. I did not.

Q. Can you?

A. I can do it.

Q. Didn't you for 1907?

A. No. I assume in the calculation here that it amounted to one figure.

Q. I thought you gave me some separate figure?

A. For 1906.

Mr. Vilas: He said he could not.

Q. Let us go back and straighten that out. Didn't you give me the land separate from the buildings in 1906 and 1907? I know you did.

A. Yes, $285,000 and $335,000. 29295

Q. So counsel need not say I am in error.

Mr. Vilas: What is $285,000.

The Witness: The land only.

The Master: I think we can get this thing straight. It is quite apparent, I think. Isn't this the fact, Mr. Nauman, that in 1906 and 1907 you gave the land value of $285,000, and with the building $335,000 total?

The Witness: Correct.

29296 Oscar C. Nauman, Recalled.

The Master: And you gave in 1906—you carried it to $310,000 for the land and $335,000 total, down to and including the year 1910?

The Witness: Yes.

Mr. Chambers: That is what I said.

The Master: And then in the year 1910 you increased the land to $440,000, and the total to $465,000?

The Witness: That is correct.

The Master: And originally you carried the buildings at about $50,000, and reduced them then

29297 to $25,000?

The Witness: Yes.

The Master: And have carried them at $25,000 all the time?

The Witness: Yes.

Q. When did you reduce them to $25,000?

The Master: Where did you get this $156,000? That must be wrong.

Mr. Vilas: If your Honor please, will you let me get an objection on the record to this?

The Master: Yes. Let us get the figures as the witness wants to give them.

Q. The way you figured that out is the exact way

29298 we had it on our list?

Mr. Vilas: It does not appear yet that this valuation does not include machinery and gas holders.

The Master: He says it does not.

Q. Does it include any machinery of any kind?

A. No, sir.

The Master: Just buildings?

The Witness: Yes, sir.

Q. When did you change the buildings from $50,000 to $25,000, what year, the taxes for what year?

The Master: In 1906 and 1907 he had $285,000 and $335,000, and other years he had $310,000.

Q. In 1908 taxes you reduced the building value from $50,000 to $25,000?

A. Yes.

Q. And continued it that way until 1911?

A. Yes.

Q. Now, the sums which you have given for 1906, '07, '08, '09, and '10—have you given the land and buildings separate for 1911?

A. $440,000 for the land and $465,000 total.

Q. Now, these sums that you have given for the 29300
total for the land and the buildings for 1906 taxes, 1907 taxes, 1908 taxes, 1909 taxes, 1910 taxes and 1911 taxes are the sums for which, in your judgment, that property would sell as of those dates, is it?

A. Yes, sir.

Mr. Vilas: I object to it on the grounds already stated.

Q. Under ordinary circumstances?

A. Yes.

Mr. Vilas: I object on the ground that it does not appear here that this includes machinery, gas holders, tanks and property that it is already affirmatively in evidence there is on this property, 29301
or what was on this property at the time, and it appears from the record that it is actually used for the gas making business.

The Master: It is allowed.

Mr. Vilas: Exception.

Q. That is as far as you valued this piece of property?

A. Yes, sir.

Q. You said yes to my last questions?

A. Yes.

29302 Oscar C. Nauman, Recalled.

By the Master:

Q. Mr. Nauman, I have just called your attention to another lead pencil note on this page, and in this connection, your sight is pretty bad, isn't it?

A. Yes, sir.

Q. Very nearsighted?

A. Yes, sir.

Q. And very difficult for you to read?

A. Yes. I do not see much.

Q. I am just reading from this lead pencil note, "old buildings, partly abandoned." Does that refresh your

29303 recollection as to the buildings?

A. Yes, sir.

Q. And the condition they were in?

A. Yes, sir.

By Mr. Chambers:

Q. You mean that refreshes your recollection why you dropped from $50,000 to $25,000 in 1908?

A. Yes.

Q. What do you recall about it now?

A. Why, the marginal street was open at that time, and a portion of these lots were taken away, and it seems to me the Gas Company practically abandoned these buidings for gas making business.

29304 Mr. Vilas: Now, I move in view of the last answer, to strike out the statements as to the total valuations and the valuations of the building on the ground that the witness has disclosed that the property was used for actual gas manufacturing purposes, and that he must have included some technical apparatus in his valuations.

The Master: Objection overruled.

Mr. Vilas: Exception.

Q. Now, Block 690, Lot 12, for the years 1906 to 1911 inclusive. Can you give me the dimensions as you started them for the 1906 tax?

A. On Eleventh Avenue, 98 feet 7 1/2 inches, at an angle.

Q. That is Marginal Street, sometimes called?

A. Yes, sir, marked here Eleventh Avenue, but it is really Marginal Street. On 18th Street, 149 feet 1 3/4 inches, running to the center line of the block on the easterly side, 92 feet in depth, then westerly to Eleventh Avenue, 184 feet 8 1/4 inches.

Q. What lots are those? 29306

A. They would be Lots 12, 20 and 29.

Q. Now, can you give me the value of Lots 12, 20 and 29?

A. Lot 12, land value $250,000.

Q. Now, Lot 20?

A. There is no 20 for 1906. That change was made later.

Q. Well then, I haven't got a description of Lot 12 for 1906?

A. This is the 1920 change here.

The Master: That was only changed in 1920?

The Witness: According to the description it is 184 feet by 474 feet. That parcel included 29307 all of this for 1906.

Q. Your dimensions are as they are on this sheet (indicating)?

A. Yes.

Q. Well, describe them, will you please?

A. On Marginal Street or Eleventh Avenue, 98 feet 7 1/2 inches by 374 feet.

Q. No, 474.

A. 474 feet 1 3/4 inches.

Q. And on Tenth Avenue?

A. 184 feet.

29308 Oscar C. Nauman, Recalled.

Q. And West 19th Street?

A. On West 19th Street, 125 feet.

Q. Right. Then—

A. Then back 92 feet, then westerly 384 feet 8 1/4 inches.

Q. Now, give the value of that land for the 1906 tax.

The Master: He gave it to you.

A. $250,000 land.

Q. Now, 1907 unimproved?

A. $250,000.

29309 Q. 1908 unimproved?

A. 1908 unimproved, $225,000.

Q. 1909 unimproved?

A. Same thing.

Q. 1910 unimproved?

A. Same thing.

Q. 1911?

A. 1911, $310,000.

Q. Now, the dimensions remained the same during that time?

A. They remained the same.

Q. Now, to go back to 1906 tax, what improvements were on it?

29310 A. It was marked two gasometers and boiler house, one-story.

Q. Is that all?

A. That is all.

Q. Did you value any of those separately, the boiler house, the building, did you value separately?

A. No, I have no record of that. The total for the entire improvements, the gasometers and boiler house together.

Q. Now, can you give the values of those?

Mr. Vilas: Objected to.

The Master: I won't take that. You haven't constructed any gasometers or had anything to do with them?

The Witness: No, sir.

The Master: You took the factors supplied by the department?

The Witness: Yes, sir.

Q. Now, each of those years I will ask you the same thing in a lump, were the same improvements on the property for 1907, 1908, 1909, 1910, and 1911 tax?

A. Yes, sir. 29312

Q. You valued those for each of those years?

A. Yes, sir.

Q. The improvements?

A. Yes, sir.

Q. Will you state what value you placed on the improvements?

Mr. Vilas: Same objection.

The Master: Objection sustained.

Q. Now, the value that you have given of that Lot 12, as you described them, for each of those years, was that the sum for which that property would sell unimproved as of those dates under ordinary circumstances? 29313

A. Yes, sir.

Q. And was it the full value of the property in your judgment?

A. Yes, sir.

Q. And you reached that value after having visited the property and having taken into consideration your knowledge of real estate?

A. Yes, sir.

Q. As you have indicated, as you have told us?

A. Yes.

Q. Now, Block 691, Lot 11, for the same period of time?

A. Lot 11, Block 691.

Q. Yes, the dimensions first?

A. On Eleventh Avenue, 197 feet 3 inches.

Q. Or Marginal Street?

A. Or Marginal Street.

Q. Right.

A. Now, there has been a change since then, about in 1910. This map was changed. 119 feet on 19th Street.

29315 Q. I have 118 feet 5 inches.

A. Yes, that is after 1910, there was a change made then, as I stated before.

Q. All right then?

A. On 20th Street there was 190 feet 1 inch, but afterwards changed to 189 feet 6 inches, and then running through the block 184 feet on the easterly side.

Q. Right. Now, what value did you place on that lot for the 1906 tax, wholly unimproved?

A. $95,000.

Q. And the same for the 1907 tax?

A. In 1907, $95,000.

29316 Q. And the 1908 tax?

The Master: For the land.

A. The land, $130,000.

Q. And the 1909 tax, wholly unimproved, the land?

A. The same, $130,000.

Q. And the 1910 tax, wholly unimproved?

A. $130,000.

Q. 1911?

A. 1911 was $200,000.

Q. Now, you spoke of a little change in the dimensions there. When do you say they occurred?

A. For the tax of 1910.

Q. That is the measurement on West 19th Street became 118 feet 5 inches?

A. That is right, 118 feet 5 inches.

Q. And remained that way for the 1911 tax?

A. Yes.

Q. Now, on West 20th Street it was changed to 189 feet 6 inches?

A. That is right.

Q. And that was so for the 1910 and 1911 tax?

A. Yes.

Q. Now, to go back to 1906, were there any improvements on that block? 29318

A. It is marked two gasometers.

Q. And the same improvements continued for 1907 to 1911, inclusive?

A. No.

Q. That was abandoned, was it?

A. That would be changed, because it is marked vacant.

Q. When?

A. Beginning 1908.

Q. Apparently they removed them?

A. I think that was done in 1911, that that change occurred.

The Master: Prior to the imposition of the 1911 tax was when the change occurred, because the 1911 tax is on the basis of vacant land. 29319

Q. So that for the 1911 tax you valued no improvements on it?

A. No improvements at all.

Q. But for the other years, 1906 to 1910 tax inclusive, you did value that with improvements?

A. Yes.

Q. These gasometers only?

A. Yes, sir.

29320 Oscar C. Nauman, Recalled.

The Master: You figured them in the way you have already described?

The Witness: Yes.

Q. Now, these sums that you have given here for that property unimproved for the 1906 tax to the 1911 tax, nominal value, is that the sum for which the property would sell in your judgment under ordinary circumstances?

A. Yes, sir.

Q. Was it the full value of the property in your judgment?

29321 A. Yes, sir.

Q. And you reached it on your own independent judgment?

A. Yes, sir.

Q. After having visited the property each year and looked at it?

A. Yes, sir.

Q. Now, are you able to state what the value was of the property with the improvements on it for 1906 to 1910 inclusive?

Mr. Vilas: Objected to.

The Master: Objection sustained.

Q. Will you give the value of the property with the

29322 improvements on for 1906 to 1910 inclusive?

Mr. Vilas: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Block 715, Lot 51, for the same period, give me the dimensions first, and let me know if there is any change from 1906 to 1911?

A. 25 feet on 18th Street by 92 feet. There has been a change since then, in 1917.

Q. While you have the book map open there, give me the dimensions of Lot 59, same Block, 715, from 1906 to 1911?

A. It was 200 feet on 18th Street by 92 feet.

Q. That stayed the same for those years?

A. Yes.

The Master: Start from 1908, down unimproved, and save time on that.

Q. Lot 51, for the taxes of 1908, unimproved?

A. $10,000.

Q. 1909, taxes, unimproved?

A. Unimproved?

Q. Yes, Lot 51?

A. Lot 51?

The Master: What is it for 1909?

The Witness: The same. 29324

The Master: 1910?

The Witness: The same.

The Master: 1911?

The Witness: The same.

The Master: Always unimproved?

The Witness: Always unimproved.

Q. Now, improved?

A. It is a vacant lot.

Q. Take Lot 59 for that 1908 tax now?

A. $80,000.

Q. 1909 tax?

A. $80,000.

Q. 1910 tax? 29325

A. $80,000.

Q. 1911 tax?

A. $80,000.

Q. Any improvements on Lot 59 during those years?

A. It is marked "Gas Works covered, two stories." That is the whole description.

The Master: And your valuation there was for the works separately as it stood?

The Witness: As it stood.

29326 Oscar C. Nauman, Recalled.

Q. Just give me again the value of the land on 59 for those years?

A. $80,000.

Q. Each year?

A. Each year.

Q. 1908, 1909, 1910 and 1911?

A. Yes, sir.

Q. You said there were some improvements on 59 for those years. Did you value the improvement?

A. Yes, sir.

Q. Did you value the buildings separately from the
29327 machinery in them?

A. I had no memorandum of machinery.

Q. Just the value of buildings?

A. Just the value of buildings.

The Master: You have a memorandum, "Gas Works"?

A. Gas works.

Q. Wouldn't that indicate fixtures?

A. This is marked two-story, description of the building alone.

The Master: You are not quite sure of that, are you?

The Witness: Quite sure.

29328 Q. You would say from the memorandum there that you only valued the buildings?

A. Yes, sir.

Q. I ask you to give the value of the buildings for each of those years?

Mr. Vilas: I object to that. It affirmatively appears from the record that these two gas holders covered—

Mr. Chambers: Gas works.

Mr. Vilas: It already appears from the complainant's testimony what was on that property during those years.

The Master: He says his notes indicate to him a two-story building which covered the plot. Is that right?

The Witness: Yes, sir.

The Master: I will take his testimony that he valued the two-story building. If I find as a fact that there was not a two-story building there I will have to discard his testimony.

What was the total with improvements for those years?

Mr. Vilas: He said he valued the building separately from the machinery. 29330

Mr. Chambers: He said he didn't value any machinery at all.

The Witness: $100,000.

Q. For each year?

A. For each year up to 1911.

Q. Now, the sum that you gave a moment ago for Lot 51, for 1908, 1909, 1910 and 1911, are those the sums for which in your judgment that property would sell under ordinary circumstances?

A. Yes, sir.

Q. As of those times?

A. Yes, sir.

Q. Was it the full value of that land unimproved 29331
in your judgment?

A. Yes, sir.

Q. Now, the sums that you have given for Lot 59, unimproved for 1908, 1909, 1910 and 1911 taxes, were those the sums for which that property would sell under ordinary circumstances in your judgment?

A. Yes, sir.

Q. Was it the full value of the property?

A. Yes, sir.

Q. The total value that you gave for Lot 59 for 1908, 1909, 1910 and 1911 taxes, with the improve-

29332 Oscar C. Nauman, Recalled.

ments on it, was that the sum for which that property would sell in your judgment with the improvements thereon during that time?

A. Yes, sir.

Q. Under ordinary circumstances?

A. Yes, sir.

Q. Was that the full value of the property in your judgment?

A. Yes, sir.

Q. Now, Block 715, Lot 51, for 1906?

By the Master:

29333 Q. Was that unimproved?

A. Unimproved—$10,000.

Q. Lot 59 unimproved?

A. $80,000

Q. The same improvements you have testified to?

A. Yes, sir.

By Mr. Chambers:

Q. How much?

A. $80,000 unimproved and $100,000 improved.

Q. Now, Lot No. 51, for the 1907 taxes?

A. Lot 51, $10,000.

Q. That is vacant?

A. A vacant lot.

29334 Q. Lot 59 for the 1907 tax, unimproved?

A. $80,000.

Q. And improved how much?

A. $100,000.

Q. Now, the sums that you have just given me for Lot 51 for 1906 and 1907, and for Lot 59 for 1906 and 1907 taxes, Block 715, are those the sums for which that property would sell, in your judgment, wholly unimproved as of those dates?

A. Yes, sir.

Q. Was it the full value of the property in your judgment?

A. Yes, sir.

Q. Now, Lot 59, Block 715, for 1906 and 1907, the total that you gave with the improvements on it, is that the sum for which that would sell under your judgment under ordinary circumstances at that time?

A. Yes, sir.

Q. Was it the full value with the improvements on it, in your judgment, at that time?

A. Yes, sir.

Q. You visited this property before you laid the assessments?

A. Yes, sir.

Q. Now, Block 716, Lot 14. What are the dimensions of that? 29336

A. 75 by 92.

Q. Give me the value of that unimproved for 1906?

A. $32,000.

Q. For 1907, unimproved?

A. $32,000.

Q. For 1908, unimproved?

A. $32,000.

Q. For 1909, unimproved?

A. $32,000.

Q. For 1910, unimproved?

A. $32,000.

Q. For 1911, unimproved? 29337

A. $32,000.

Q. Is that as far as you go?

A. No, sir, 1912 and 1913.

Q. Give me 1912?

A. $32,000.

Q. 1913?

A. $33,000.

Q. Now, those sums that you have just given for that lot unimproved, were those the sums for which, in your judgment, it would sell as of those dates under ordinary circumstances?

A. Yes, sir.

Q. Was it the full value of that lot in your judgment at those times?

A. Yes, sir.

Q. Were there any improvements on Lot 14 in 1906?

A. It is marked "Stables, two-story."

Q. Did that continue right down through?

A. All the way through.

Q. Now, year by year, for the 1906 taxes, give me the value of that stable?

A. $4,000; $36,000 total.

29339 Q. Give it to me for each year, is it the same?

A. Yes, sir, up to 1912.

Q. Did you value it in 1913?

A. Yes, sir.

Q. At how much?

A. $4,000 for the stable.

Q. In 1913, it was $33,000 for the land and $4,000 for the building?

A. Yes, sir.

Q. Making $37,000 in 1913?

A. Yes, sir.

Q. These sums that you have just given for that Lot 14, with the improvements thereon, were those the

29340 sums for which in your judgment that lot would have sold under ordinary circumstances from 1906 to 1913, inclusive?

A. Yes, sir.

Q. And was it the full value with the improvements on it as of those dates?

A. Yes, sir.

Q. There was nothing else on that block, Lot 14, except what you have described by way of improvement?

A. That is all.

Q. Now, Block 1457, Lot 6. Give me the dimensions of that?

A. On 62nd Street, 266 feet 7 inches; on the easterly end 200 feet 10 inches; running westerly 216 feet 6 inches; then southerly 100 feet 5 inches, then westerly 50 feet 1 inch; then southerly 100 feet 5 inches.

Q. When you are giving me the valuation of this I would like to have you exclude that little chunk in there (indicating); I want you to cut that out. Can you give me the value of what I have marked on here as Parcel No. 1, excluding the 50 feet 1 inch by 100 feet 5 inches? 29342

Mr. Vilas: I object to that.

The Master: For the purpose of saving time I will let the witness give you his valuation, and give you the units, and you can figure it out.

Mr. Vilas: I object to that.

Mr. Chambers: The other witness cut that right out.

The Master: What did you figure that at?

The Witness: $65,000 a lot.

Q. So that little lot that I have marked there would be how much?

A. $13,000 for the land.

Q. For 1916 taxes? 29343

A. Yes, sir.

Q. The balance of that lot would be how much, unimproved?

A. Deducting $13,000 would leave $132,000.

Q. Continue right on with it. How much for the 1917 tax?

A. 1917, the same.

Q. And the little parcel the same?

A. Yes, sir.

Q. Now, 1918?

A. The same.

29344 Oscar C. Nauman, Recalled.

Q. And 1919?
A. The same.
Q. Did you do it for the 1920 tax?
A. No.
Q. Somebody else did?
A. Somebody else.
Q. What improvements did you find on that lot and block?
A. Gas holder, marked 187 feet diameter.
Q. Was that the only improvement on there?
A. That is the only one.
29345 Q. That continued down during those years?
A. Through all these years.
Q. Now, the sums that you have given me for that lot, excluding the little piece there that I called attention to, is that the sum for which in your judgment that lot would have sold wholly unimproved?
A. Yes, sir.
Q. For 1916, 1917 and 1918 and 1919?
A. Yes, sir.
Q. Was it the full value of it in your judgment?
A. Yes, sir.
Q. You placed a value upon the holder, the same as you have testified to before?
29346 A. Yes, sir.
The Master: Figured in the same way as the other holders?
The Witness: Yes, sir.
Q. For each of the years?
A. Yes, sir.
Q. Will you give the value of the holder?
Mr. Vilas: Objected to.
The Master: Objection sustained.
Mr. Chambers: Exception.
Q. Was it a holder?
A. Yes, sir, marked gas holder.

29347

Q. Do you remember where that was located?

A. I assume in the centre of the block. 187 feet diameter would cover nearly the whole of it.

Q. Will you give the value of the land with the improvements thereon for those years?

Mr. Vilas: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception. That is all.

Adjourned to Friday, January 9, 1920, at 9:30 A. M.

29348

Last Complainant's Exhibit 401.

Last Defendants' Exhibit AA47.

29349

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 29353

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, January 9, 1920.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 29354
MR. O'BRIEN, of Counsel for defendant Swann.

Mr. Ransom: May the record show that Mr. Cortelyou, Mr. Carter and Mr. Addicks are here as requested.

WILLIAM B. HOGAN, recalled as a witness in behalf of the defendants, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS: 29355

Q. Mr. Hogan, you testified in this case last summer or fall, whenever it was?

A. Yes, sir, in August.

Q. And you stated then when you were appointed Deputy Tax Commissioner?

A. Yes, sir.

Q. And you subscribed to an oath of office before you entered upon your duties?

A. Yes, sir.

Q. And you took a competitive examination?

A. Yes, sir.

Q. And was appointed as a result of that examination?

A. Yes, sir.

Q. How many years have you been Deputy Tax Commissioner?

A. Since June, 1911.

29357 Q. And prior to that what was your business?

A. I was in the real estate business.

Q. Can you tell me how long you have been in the real estate business?

The Master: Oh, we have had all that.

A. It is in the record, what I did from the time I left school, I believe.

The Master: This witness is qualified to testify to the value of land and buildings, in his judgment except in so far as his judgment was affected, directed and limited by rules and practices of the department. Now, let us get ahead.

Q. During all this time that you were in the real
29358 estate business and Deputy Tax Commissioner have you kept track of sales of real estate and buildings?

The Master: We have had all that.

Mr. Chambers: We haven't had about improvements.

The Master: Yes, but I will let you ask him.

A. I have.

The Master: The sales and transactions that you have testified to before cover buildings as well as land?

The Witness: To the best of my knowledge.

The Master: But it did not cover cost of apparatus, of holders, and matters of that kind?

The Witness: No, sir.

The Master: Or the machinery?

The Witness: No, sir.

Q. Do you keep track of rentals of improved real estate in the city?

A. Yes, sir, and have had charge of it.

Q. You had charge of rentals?

A. Yes, sir.

Q. For how long?

A. About seven years, off and on.

Q. And mortgages on improved real estate?

A. Yes, sir. 29360

Q. During this time?

A. Yes, sir.

Q. Have you operated in several districts in Manhattan?

Mr. Ransom: I object to this, it has all been gone over.

The Master: I have been trying to indicate to Mr. Chambers that this was unnecessary, but it wastes more time in trying to stop it than to let him ask the questions.

Mr. Ransom: It is a waste of time, and deliberate, just because he has a lot of witnesses here. 29361

Mr. Chambers: That is not so. Counsel is now making one of his statements which has no basis in fact at all, the usual Ransom hot air stuff.

The Master: Go ahead.

Q. Did you look up Block 1999, Lot 1, for us?

A. Yes, sir. For any particular year?

Q. For the 1916 tax?

A. Yes, sir.

Q. Will you please give me the dimensions of that lot as you found them on October 1st, or just prior thereto in 1915, for the 1916 tax?

29362 William B. Hogan, Direct.

A. 199 feet 10 inches on Twelfth Avenue on the north side of 132nd Street, 675 feet; on the south side of 131st Street, 650 feet. That is without referring to the map. If you want me to verify it I will do so.

Q. Will you please verify that?

A. Those dimensions are accurate.

Q. Does it occupy the whole block?

A. No, sir.

Q. Not quite?

A. About three-quarters of the block.

Q. You placed a valuation upon that lot of the size
29363 which you have just described?

A. Yes, sir.

Q. For the 1916 tax?

A. Yes, sir.

Q. What valuation did you place upon it, wholly unimproved?

A. $415,000.

Q. Now, for the 1917 tax, unimproved?

A. The same amount of money.

Q. And the 1918 tax?

A. $165,000, but the size had changed; it had been apportioned.

Q. Right there, will you give me the change.

29364 The Master: For the 1918 tax?

Mr. Chambers: Yes.

Mr. Ransom: We have already had that.

The Master: Well, let us have it again.

A. The size for the 1918 tax was 199 feet 10 inches on Twelfth Avenue, by 250 feet deep on each street.

Q. That is the size of the lot that you valued for the 1918 tax?

A. Yes, sir.

Q. Now, the 1919 tax?

A. The same size.

Q. What valuation did you place upon it?

A. $165,000.

29365

Q. Did you value it for the 1920 tax?

A. Yes, sir.

Q. What valuation did you place upon it?

A. $165,000.

Q. Now, go back for the 1916, 1917 taxes—it was the original size as you have given it?

A. Yes, sir.

Q. Can you give me your units for that?

A. $7,000 a lot, plus 50 per cent for corner in each case.

Q. Any plottage?

A. Ten per cent.

29366

Q. How many lots? I want to get only the 250 feet?

A. They were not assessed that way.

Q. I know it?

A. You want that part of it that was assessed, is that it?

Q. Yes, sir, the relative value of this part to the other.

A. Well, it would be approximately $165,000. That is the apportioned value of the whole, which was formerly $415,000 in the year 1916.

The Master: The part that remained would be $350,000?

29367

The Witness: Yes.

Q. In other words, for the 1916 and 1917 tax, that part of it which is bounded on Twelfth Avenue by 199 feet 10 inches, and on 133rd Street 250 feet, and on West 132nd Street, 250 feet, and the rear being the same as on Twelfth Avenue, would be that sum of $165,000?

A. If apportioned.

Q. Now, these sums that you have given, including this last one I have just asked about, for these various years, are those the sums for which, in your

opinion, that lot would sell under ordinary circumstances if wholly unimproved?

A. Yes, sir.

Q. Are those values which you have given the full value of that property, in your judgment?

A. Yes, sir.

Q. And you arrived at a value from your own independent judgment?

A. Yes, sir.

Q. Now, go back to 1916 tax—was there any improvements upon the property?

29369 A. Yes, sir.

Q. What improvements, Mr. Hogan?

A. A gas holder.

Q. Is that all?

A. To the best of my knowledge, yes, sir.

Q. Have you anything there that would refresh your recollection as to where the gas holder was located?

A. Yes, sir, I have in my memory.

Q. What portion of the lot?

A. The gas holder was at that time located on the part that is now known as Lot 1, 199 feet 10 inches by 250 feet.

29370 Q. Was there anything else on the other part of the property that you recall?

A. Not so far as I recall.

Q. What improvements did you find upon the property that you have described for 1918 tax, the same holder?

A. The same holder, yes, sir.

Q. And for the 1919 tax?

A. Same holder.

Q. And for the 1920 tax?

A. Same holder.

29371

Q. Now, you placed a valuation, did you upon the property with that improvement on it for 1916, 1917, 1918, 1919 and 1920 taxes?

A. Yes, sir.

Q. Are you able to say what was the value of that property with that improvement on it as of those dates?

Mr. Ransom: Objected to on the grounds previously stated as not qualified.

The Master: Objection sustained.

Mr. Chambers: Exception.

29372

Q. Will you please give the valuation that you placed upon that property as of those dates with those improvements thereon?

Mr. Ransom: Objected to on the grounds previously stated.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. How did you value the holder, Mr. Hogan?

Mr. Ransom: Objected to.

The Master: Objection sustained. I don't want how he valued it, he is disqualified to value it, he doesn't know anything about it.

Mr. Chambers: Well, you don't know.

29373

Mr. O'Brien: Your Honor doesn't know that yet.

The Master: Yes, I do.

Mr. O'Brien: You are assuming that from what other witnesses testified.

The Master: He is not qualified to give the value of the holder, and I won't take it.

Mr. Chambers: Will you let me ask him how he did it in this instance, and see if he valued it?

The Master: No, I don't care how he did it. He didn't have any experience, doesn't know anything about holders, and only knows about land and buildings, and I won't take it.

Mr. O'Brien: How do you know he doesn't?

The Master: Because he said so when I asked him and you were not here, and you base arguments on facts you don't know what you are talking about.

Mr. O'Brien: I move an exception to your Honor's statement that I make arguments about facts that I don't know anything about.

The Master: Your objection is noted.

Mr. O'Brien: And I enter my protest.

The Master: Your protest is noted.

29375 Mr. Chambers: You won't let me ask him?

The Master: I have made my ruling. What difference does it make to us what he did, when I won't take his answer.

Q. Now, Mr. Hogan, Block 1998, take Lot 50, and I am going to ask you about Lots 50, 53, 54, 55 and 56 in that block. Did you value Lot 50 for the 1916 taxes?

A. Yes sir.

Q. Will you please give me the dimensions of Lot 50, as you valued it for the 1916 taxes?

A. 75 feet in front by 99 feet 11 inches deep.

Q. And what value did you place upon the lot for

29376 the 1916 taxes, wholly unimproved?

A. $21,000, but I would like to verify that as this field book does not show it.

Q. All right, if you will, please.

A. (Referring to book.) $21,000 on the land.

Q. Did you find some improvements on it?

A. Yes, sir.

Q. What improvements?

A. Why, I believe what is known as a power plant or pumping station.

Q. The 1917 tax wholly unimproved?

The Master: Why can't you dispose of that 1916 situation by asking if he appraised the buildings?

Q. All right. Now, the buildings of Lot 50, for the 1916 tax.

The Master: Did you value the buildings as distinguished from part of the power plant?

The Witness: Yes, sir.

Q. Give me the value you placed on the buildings?

A. For 1916, we placed $15,000 on the buildings.

The Master: That is, without any fixtures or machinery? 29378

The Witness: Yes, sir.

Q. Did you place any value upon anything else, any other improvements? Don't give it?

A. Yes, sir; the machinery.

Q. In the buildings?

A. Yes, sir.

Q. Now, the 1917 tax.

A. Do you want me to give the same thing?

Q. Yes, the land and building.

A. The land, however, was changed in 1917, and made $22,000.

Q. And the buildings?

A. $14,000; $1,000 taken off the building and put 29379
on the land.

Q. The 1918 tax as to the land, and then the buildings?

A. $22,000 on the land and $14,000 on the building, and the machinery—making a total of--

Q. No, don't give the machinery.

Mr. Ransom: Strike out the $22,000

The Master: The stenographer did not get any total.

Q. You did not give the machinery? You were going to?

A. I was going to, but did not.

29380 William B. Hogan, Direct.

Mr. Ransom: $22,000 for the machinery.

The Master: $22,000 for the land and $14,000 for the building.

Q. 1918, land, wholly unimproved, and then the buildings without the machinery.

A. Land, $22,000 and the building $14,000.

Q. 1919.

A The same figure.

Q. 1920.

A. Same figures.

The Master: In all these years you valued the
29381 machinery in addition?

The Witness: Yes, sir.

Q. Now, you visited that property?

A. Yes, sir.

Q. And looked it over?

A. Yes, sir.

Q. Now, you know the kind of building that was on the property?

A. Yes, sir, went through the building.

Q. And that was before you fixed these values?

A. Yes, sir.

Q. Now, the sums which you have given for that block, wholly unimproved, are those the sums for
29382 which it would sell, in your opinion, under ordinary circumstances, upon those dates?

A. Yes, sir.

Q. And the values you have given for that lot with the improvements that you have described thereon, to wit, the building, excluding the machinery, together with the land value, are those the sums for which that property would sell under ordinary circumstances that time?

A. While used.

Q. While used for the purpose for which it was used?

A. Yes.

Q. You knew what it was used for?

A. Yes, sir.

Q. Took that into consideration?

A. Yes, sir.

Q. Would it be less value if it was valued for that purpose?

A. Well, in my opinion, if I found the plant that was used for some other purpose, it would have to be dismantled and altered, the machinery was so bound up with the plant that I would probably value it differently than I did.

Q. Do you think you would give it a less value un- 29384
der those circumstances?

A. Well, that would depend. If it were vacant I would probably, an abandoned building.

Q. Now, can you give me for the same period of time the value you placed upon the property with all the improvements on it, that is the buildings and the machinery?

Mr. Ransom: Objected to on the previous grounds.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say what would be the value of that property with all the improvements on which 29385
you described, including machinery?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, Lot 53?

A. Yes, sir, for the lot, $7,000.

The Master: For all of these years?

The Witness: Yes, sir.

Q. For all of these years, that is $7,000 for 1916 tax, 1917 tax, 1918 tax, 1919 tax and 1920 tax?

A. Yes, and the same for Lots 54, 55 and 56, for all those years.

Q. Now, the sizes, were all lots the same, 53, 54, 55 and 56, in that Block 1998?

A. Yes, sir.

Q. And they are all vacant?

A. Yes.

Q. What was the size?

A. 25 by 99 feet 11 inches each.

Q. And the sums which you have given was the value you placed upon each of those lots for each of those years?

A. Yes, sir.

29387 Q. And they were all vacant, no improvements on them?

A. No improvements on them, no, sir.

Q. And those sums which you have given for each of those lots for each of the years, were those the sums for which that property would sell, in your judgment, under ordinary circumstances, wholly unimproved?

A. Yes, sir.

Q. And were those values which you placed upon those lots upon those dates the full values of the property, in your judgment?

A. Yes, sir, in my judgment.

29388 Q. And you visited those lots and examined them?

A. Yes, sir.

Q. Block 1642, Lots 32 and 33, you valued Lot 32, did you, Block 1642, for the taxes for 1916? Is that when you begin with your list, Mr. Hogan?

A. Yes, I have this for 1916. I valued Lot 32, yes, sir.

Q. Now, just give me the size of it, then?

A. The size at that time was 42 feet 2 inches on the north side of 114th Street, running through 100 feet.

Q. Will you get out your maps. Have you got your map?

A. I have. I was mistaken in that. The size at that time was 50 feet 5 inches on the street, running through 100 feet 11 inches.

Q. Right. That checks.

Mr. Ransom: With what?

Mr. Chambers: It checks with the Exhibit 178.

Mr. Ransom: Well, it is right, if it does.

Q. Now, the side dimension was 100 feet 11 inches? 29390

A. Deep.

Q. Now, did you value that lot before 1916?

A. Yes, sir. For 1916?

Q. But you don't know prior to that?

A. No, sir. I thought you said for 1916.

Q. Now, give me the value you placed on the lot for the 1916 tax?

A. $22,000.

Q. And then did you value it with the improvements on it, the same year?

A. Yes, sir.

Q. What improvements did you find upon it?

A. A building covering approximately the whole of that area. 29391

Q. Did you look over the building?

A. From the street only.

Q. And you knew what it was made of when you looked at it?

A. Yes, sir.

Q. And how it was located upon the land?

A. Yes, sir.

Q. That is, the general layout there?

A. Yes, sir.

Q. And then you placed a value upon it, did you?

A. Yes, sir.

Q. What value did you place?

A. $22,000.

Q. That is for the building alone?

A. Yes, sir.

Q. There were no contents?

A. I did not appraise any of the contents.

Q. Now, did you value it for any other year?

A. No, sir.

Q. Now, the value which you placed upon Lot 32
29393 as wholly unimproved, is that the sum for which that lot would sell under ordinary circumstances, in your judgment?

A. It was.

Q. And was it the full value of that lot, in your opinion?

A. It was.

Q. Now, Lot 32, the sum which you have given for that lot, the total sum with the improvements thereon, including the land, is that the sum for which that property would sell under ordinary circumstances at that time?

A. $45,000; it was, yes, sir.

29394 Q. And is that, in your judgment, the full value of that property, land and improvements?

A. At that time, yes, sir.

Q. Now, Lot 33, for 1916, will you give me the size, as you valued it?

A. 25 feet 2 3/4 inches on Third Avenue by 100 feet deep on the street.

Q. That was a hundred, you say, by twenty-five?

A. No; twenty-five feet two and three quarters inches on Third Avenue by one hundred feet on the north side of 114th Street.

Q. Now, you visited that lot, did you, in 1915, sometime?

A. Yes.

Q. And valued it for the 1916 tax?

A. Yes, sir.

Q. And what value did you place upon the whole, unimproved, for the 1916 tax?

A. Do you want me to testify from the papers that I may have, or testify from the records.

Q. Yes, refresh your recollection.

Mr. Ransom: I am willing Mr. Hogan should testify from any memorandum that he has. 29396

The Witness: I reduced the land that was there that year, and to the best of my recollection these figures on the memorandum are not right.

Mr. Chambers: Counsel says he is willing to have him look at any paper that he has. He has a right to look at any paper, that isn't any concession.

The Witness: The land is assessed for $33,000.

Q. That is for the 1916 tax?

A. Yes, sir.

Q. Any improvements on that, Mr. Hogan?

A. Yes, sir, there was a building there occupied as 29397
offices of the company.

Q. Did you look at the building?

A. Yes, sir.

Q. And after looking at it, did you place a valuation upon it for the 1916 tax?

A. Yes, sir.

Q. Now, give me the value you placed upon the building alone?

A. $15,000.

Q. Any other improvements except the building that you valued?

A. I did not assess any, if there were.

Q. Do you remember what the building was used for?

A. Yes, sir, it was used for an office. I have been in it a number of times.

Q. Do you remember what the building was used for on Lot 32, you have just spoken of?

A. Also used for offices of the company.

Q. Now, the value which you have given for that Lot 33 for the 1916 tax, wholly unimproved, is that the sum for which that property would have sold under ordinary circumstances, in your judgment?

29399 A. Yes, sir, it was.

Q. And the sum which you have given for that lot unimproved first, and then with the improvements thereon, is that the sum for which that lot would have sold at that time under ordinary circumstances in your opinion?

A. Yes, sir.

Q. These two values which you have given unimproved and improved, were those the full value of the property, in your judgment?

A. Yes, sir.

Q. Now, did you value that lot for any other year later?

29400 A. No, sir.

Q. Have you any other lots that we asked you to look up?

A. No, sir.

Q. That includes all of them?

A. Yes, sir.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Hogan, are those figures which you have given for buildings based on your estimate of the reproduction cost of the buildings as of that time?

A. Why, not exactly. They are based upon my judgment that that is the value that those buildings add to the value of the land.

Q. Is it what it would cost to reproduce buildings of that kind at that time?

A. No, sir.

Q. Is it what the buildings of that kind would sell for at that time on such land?

A. Yes, sir.

The Master: That is your judgment?

The Witness: In my judgment, yes, sir.

Q. You are clear that it is not the cost to build similar buildings at that time?

A. Absolutely.

Q. You did not take that into account? 29402

A. I took it into account, but I am supposed to value property, and I do, in my opinion, value it at what it would sell for under ordinary circumstances.

Q. On the sales basis?

A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

Q. These values which you have given, Mr. Hogan, was there an application made by the Consolidated Gas Company or some one to reduce the assessment?

Mr. Ransom: I object to the question. If there was such an application, the written application is the best evidence. 29403

The Master: Objection overruled.

Mr. Ransom: I object to his conferring with the witness.

The Master: He can take the witness off the stand and confer with him and put him back on, if he wants to.

Mr. Ransom: I want the record to show it, if he does.

Mr. Chambers: All right. I am through with the witness.

(Witness excused.)

29404 Harry G. Wilson, Direct.

HARRY G. WILSON, called as a witness in behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. What is your business?

Mr. Ransom: Has Mr. O'Brien any cross-examination of the last witness? I would like the record to show whether he has or not.

The Master: Don't worry about Mr. O'Brien. Go ahead.

29405 Mr. Chambers: I do not understand what he means by that.

The Master: I don't either. Do you want to ask this witness anything?

Q. Mr. Wilson, where are you employed and what is your business?

A. Deputy Tax Commissioner.

Q. And how long have you been a Deputy Tax Commissioner?

A. Since August, 1911.

Q. And prior to that what business were you in?

A. In the building business.

Q. Building business?

29406 A. Yes, sir.

Q. In New York City?

A. Yes.

Q. And how long had you been in the building business before you were a Deputy Tax Commissioner?

A. Oh, about four or five years.

Q. And what kind of building construction?

A. I was in the engineer's office, my own brother, to be exact.

Q. And what kind of buildings did he build?

A. All kinds, apartment houses, office buildings, residences and all.

Q. All kinds?

A. Yes, sir.

Q. And you participated, did you?

A. I was the office man for my brother.

Q. And did you know the cost of the buildings?

A. Yes, I saw all the estimates that came in.

Q. You prepared all the estimates?

A. Yes, as they came in.

Q. And you knew the specifications? 29408

A. Exactly, and the plans.

Q. And the contracts, and what they were made of and what the cost of all the materials were that went into them?

Mr. Ransom: I object to the question as leading.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I saw the estimates.

Mr. Ransom: I do not object to leading questions merely, but I object to a continuous flow of testimony from Mr. Chambers.

The Master: Objection overruled. 29409

Mr. Ransom: Exception.

Q. And you obtained your present position by reason of a competitive examination?

A. Yes; of which I passed first on the list.

Q. And you took an oath of office when you were appointed?

A. Yes, sir.

Q. And you have been acting as Deputy Tax Commissioner ever since?

A. Since then, yes, sir.

Q. In this building business you spoke of, where you prepared the estimates for these buildings, where were those erected, in and around and about Manhattan?

A. Yes, some on Manhattan, some on Long Island, and all over.

Q. Could you speak of any particular buildings that were erected in which you participated in preparing the estimates?

A. Why, yes, some down on Long Island, around Huntington and down there, and in recent years,
29411 since I have had this job here, I have sort of kept in touch with conditions around New York, and I know of one building about three years ago, an apartment house on the corner of Broadway and 76th Street, an apartment house building built by the Astor Estate, in which I knew the contracts and so on.

Q. And saw the specifications?

A. Exactly.

Q. And knew the prices that were paid for materials that went into that?

A. Exactly. At those times.

By the Master:

29412 Q. Did you ever build any gas holders?

A. No.

Q. Gas plants?

A. Nothing at all.

Q. Manufacturing plants?

A. No.

Q. Machinery?

A. No.

Q. Do you know anything about the value of machinery?

A. Nothing at all.

Q. Or of gas holders?

A. No.

By Mr. Chambers:

Q. Did you say you did not know about the value of machinery?

A. Nothing whatever.

Q. Will you turn to Block 2108, Lot 23. Is that right?

A. Yes, sir.

Q. You valued that, did you? For the taxes of what year?

A. For 1916, 1917 and 1918.

Q. 1916, 1917 and 1918 taxes?

A. Yes. 29414

Q. Will you give me the dimensions, Mr. Wilson, of that lot?

A. That is on the south side of 158th Street, between St. Nicholas Avenue and Amsterdam Avenue. It is a piece 50 x 100 in round figures.

Q. You visited that lot, did you, prior to placing an assessment for 1916?

A. What is that?

Q. Prior to it?

A. Oh, no, just for the tax of 1916, during 1915.

Q. I mean you visited it, before you laid the taxes for 1916?

A. Surely. 29415

Q. What value did you place upon that lot for the 1916 taxes?

A. Land $20,000.

Q. And did you find any improvements on it?

A. Yes, I saw a four-story meter shop.

Q. And did you look that building over?

A. Yes, sir.

Q. Were you familiar from your experience with that kind of constructed building?

A. Yes, sir.

Q. And you placed a valuation upon the building alone, did you, without the contents?

A. Yes.

Q. Will you please give the value of the building?

A. Well, I gave my land value, $20,000, and my total value $40,000.

By the Master:

Q. That amount $20,000 is for the building?

A. Yes, sir.

Q. Nothing for the machinery?

A. Nothing.

29417 By Mr. Chambers:

Q. Nothing for contents or machinery?

A. Nothing whatever. It is only a meter shop, that is all.

Q. Give the value that you placed upon the lot unimproved, the same lot, for the 1917 tax?

A. $21,000.

By the Master:

Q. Improved?

A. $53,000.

Q. And the next year?

A. For 1918, land, $21,000, total $53,000.

Q. Next year.

29418 A. That is all I have.

Mr. Chambers: That is all he has.

Q. The same building on there in all those years?

A. Yes, sir.

Q. And the same size lot?

A. The same size lot and same buildings.

Q. Is that what you thought full value?

A. Yes, sir.

By Mr. Chambers:

Q. For each of those years?

A. Yes, sir.

By the Master:

Q. And the price for which it would sell under ordinary circumstances?

A. Yes, sir.

Q. Improved and unimproved?

A. Yes, sir.

By Mr. Chambers:

Q. Improved and unimproved, at those values?

A. Yes, sir.

Q. Did you have any other lots?

A. That is the only one.

Q. That is the only one we gave you? 29420

A. That is the only one.

Mr. Chambers: That is all.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Did you ever build any buildings for a gas plant?

A. No.

The Master: He said no.

Mr. Ransom: Not as to buildings.

The Master: He said he had nothing to do with gas plants.

Q. You never built any office buildings?

A. No, sir.

Q. Any factory buildings? 29421

A. Well, I don't know, but all the buildings that came in this office, I had charge of the office end of it, the contracts, and the cost and all that, all the buildings, you see, that were built.

Q. What were the factors on this building given you by the Department?

A. The factors of land?

Q. No, as to buildings.

By the Master:

Q. What factors did you use?

A. I used a factor there of about one dollar a square foot for the year 1916.

Q. And after that?

A. There is a little higher factor on there.

By Mr. Ransom:

Q. Where did you get that factor?

A. What?

Q. Where did you get that factor?

A. I thought that that building added that amount
29423 to that land.

Q. Did that factor coincide with the factor furnished to you by the Tax Department?

A. No, sir.

Q. Was it higher or lower?

A. Well, we have our own range to pick from.

Q. As to this building is there any Department factor applicable to it or to that class of building?

A. Yes, they have their factor. Possibly it may run between 75 cents and $2.00, so that it is up to you to pick out which one you want.

Q. What was the department factor as to this kind of building?

29424 A. Between 75 cents, possibly, and $2.00.

The Master: You do not remember exactly?

The Witness: No, sir.

Q. How long ago was it that you were in the building business?

A. From 1904 until 1910, and from 1910 up to now I have been employed in the Tax Department.

Q. How much would you say the cost of building materials had gone up since that time?

A. From what time?

The Master: In what time?

Q. From 1910 to the present time.

A. From 1910 to the present time, this kind of a building or—

Mr. Chambers: Just a minute. I object to that as not cross-examination.

The Master: Overruled.

Mr. Chambers: Exception.

Q. As to materials that went into this kind of a building.

A. Why, I should say between 50 and 75 per cent.

By the Master: 29426

Q. Was this a brick building?

A. Yes, sir, a brick building.

Q. What was brick selling for in 1910, do you remember?

A. I should imagine around $7 a thousand, front brick.

Q. What is it selling for now?

A. Around $15 or $20.

Q. Around $22 or $23 or $24, isn't it?

A. I don't know that.

By Mr. Ransom:

Q. Were you familiar with the labor costs that entered into that kind of a building? 29427

A. Yes, sir.

Q. How much would you say they had gone up from 1910 to the present time?

Mr. Chambers: I object to that as not proper cross-examination.

The Master: Overruled.

Mr. Chambers: Exception.

A. Oh, about half, I should imagine.

Q. Not more than fifty per cent?

A. No, around fifty per cent, I guess. They are getting one dollar an hour now, you know.

29428 Harry G. Wilson, Re-direct.

By the Master:

Q. What did they get?

A. Five or six dollars a day.

Q. That was about fifty cents an hour; that used to be a ten hour day, did it not?

A. Eight hour day.

The Master: We do not want any more of that.

Mr. Chambers: I want to ask him one question.

RE-DIRECT EXAMINATION BY MR. CHAMBERS:

29429 Q. The prices that you have spoken of at the present time, are those not extraordinary in your judgment?

A. Yes, they are very extraordinary.

By the Master:

Q. How long is it going to last?

A. Nobody knows.

Q. How long do you think it is going to last?

Mr. Chambers: I object to that.

The Master: You have opened the door now, and I am going to get it.

A. I should imagine for the next two or three years.

Mr. Chambers: I object to the Master's ques-
29430 tion on the ground it is not proper cross.

The Master: Why do you object to everything I want to ask? I want to get the truth.

Mr. Chambers: There was nothing brought out by us that would warrant any such question.

The Master: Overruled.

Mr. Chambers: Exception. I move to strike it out.

The Master: Motion denied.

Mr. Chambers: Exception.

The Master: Are there any more of these tax witnesses here?

Mr. Chambers: I want to ask another question about the question you asked him now.

The Master: Go ahead.

By Mr. Chambers:

Q. You say the conditions are very extraordinary and they may last. Is your opinion only a guess?

A. That is all any man's opinion is today.

Q. Can anybody tell, Mr. Wilson?

A. Nobody can tell; it is only a guess.

Q. Something might happen in a week or two by 29432
which the prices would go down?

A. I do not believe so, because there is such an awful large shortage of all kinds of buildings, and they must build.

Q. But you have not any knowledge that would give you a right to decide what may happen in the future any more than any other living person?

A. Nobody can look forward in this world.

Q. That is no knowledge that is peculiar to yourself?

A. No.

Q. The Court's guess would be just as good as 29433
yours?

A. Yes, sir.

Q. And my guess would be just as good as yours?

A. Yes.

Mr. Chambers: I won't say anything about Judge Ransom's. His would not be any good.

Re-cross Examination by Mr. Ransom:

Q. Has there not been a very marked upward trend in prices, in costs?

A. Especially during the past year.

29434 Charles Strobel, Direct.

Q. You do not know how long that is going to continue?

A. No.

The Master: You are running around in a circle. Step down, Mr. Wilson.

CHARLES STROBEL, recalled as a witness in behalf of the defendants, testified as follows:

29435 DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. You are the same Mr. Strobel who testified in this case last summer?

A. Yes, sir.

Mr. Ransom: I am willing to concede that this man is qualified to testify both as to land and buildings.

The Master: That ought to save some time.

Mr. Chambers: All right.

The Master: Do you want to ask him what he knows about machinery and gas holders and manufacturing of gas?

Mr. Chambers: I do not know whether there
29436 was any involved here.

The Master: I will ask him to save time.

By the Master:

Q. Did you ever build any gas holders yourself?

A. No, sir.

Q. Or gas making machinery or apparatus?

A. No, sir.

Q. Do you pretend to be an expert as to those matters?

A. No, sir.

By Mr. Chambers:

Q. Will you take Block 239, Lot 1, for the tax of 1917, and please give me the description, Mr. Strobel, of that lot?

A. That is the northeast corner of Hester and Elizabeth Streets, 100 feet square.

Q. And that was in your district, was it, in 1916, for the 1917 tax?

A. No for 1916, but the assessment for 1917 and 1918.

Q. For 1917 and 1918?

A. Yes. 29438

Q. You visited it in 1916 for the 1917 tax?

A. In the summer of 1916.

Q. And you have looked at Lot 1 and Lot 5, both of them?

A. Yes, sir.

Q. What are the dimensions of Lot 5, same block?

A. Lot 5 is on the east side of Elizabeth Street, 100 feet north of Hester, 50 feet front by 100 feet in depth.

Q. You valued the Lot 1, did you, for the 1917 tax?

A. Yes, sir.

Q. What value did you place upon it? 29439

A. $93,000 for the land.

Q. And you found some improvements thereon?

A. Yes, sir, a building.

Q. And did you look that over?

A. I did.

Q. And placed a valuation upon that building?

A. I did.

Q. What value for the 1917 tax?

A. In reference to the value of the buildings on Lot 1 and Lot 5 and machinery I cannot give you the

exact figures, because that has been rubbed out in the field book. I can give you the total value, but the subdivision it is impossible to give.

The Master: We do not want that.

The Witness: For 1917 and 1918 it is impossible to give, but I can give it to you for 1919.

Q. All right.

A. There was a small amount allowed for machinery there. It is not very much, a few thousand dollars; so it does not make much difference. But somebody has rubbed out the computation on the field
29441 book for those three years in cleaning up the book.

Q. You do not know who that was, do you?

A. It might have been myself, for all I know.

Mr. Ransom: I object. He says he has no way of refreshing his recollection and that the item was several thousand dollars.

The Master: Objection overruled. There was nothing suspicious about the rubbing out, was there?

The Witness: No, not at all. It is done every day in cleaning up books, otherwise so much data would accumulate on them we would not be able to tell one thing from another.

29442 The Master: He does not subdivide the figures.

Mr. Chambers: We do not do like the other side—charge somebody with rubbing out, and so on.

Q. It was done probably in the Department?

A. Either by myself or my associate most likely, in cleaning up the book.

Q. Can you recall or can you give what in your judgment was the full value of the building you placed upon it, excluding the machinery, for those two years?

A. Well, to the best of my belief and knowledge I think it was $15,000 for the building on Lot 1.

Q. Do not give me the machinery.

A. No, this is for the building.

Q. Just for the building?

A. The building only, yes.

Q. On that Lot 1?

A. On Lot 1.

Q. What kind of machinery was in there that you valued?

A. In the basement they have a sort of meter repair shop and they have a few lathes and presses and pipe-cutting machines, and so forth. It does not amount to very much. 29444

Q. That is what you valued in addition?

A. For that we put an additional assessment on, for machinery.

The Master: Do not give the amount.

Q. That same value that you have given covers 1917 and 1918 taxes?

A. 1917 and 1918; yes, sir.

Q. The 1919 tax on the lot, unimproved first.

A. I made a reduction of $3,000 on the land, making the land $90,000.

Q. It would make the land how much?

A. $90,000.

Q. And for the 1920 tax? 29445

A. I did not assess it for 1920, sir, only for 1919.

Q. Was that the 1919 you just gave?

A. That is the 1919 I have given you just now; yes, sir.

Q. Give me the value of the building?

A. $20,000 on that lot.

Q. That is without any machinery?

A. Without machinery; yes, sir.

Q. Did you place any value upon any machinery in it?

A. I did; yes, sir.

Q. That year?

A. Yes, sir.

Q. A substantial amount or a small amount?

A. No, a small amount, but that is not included in this $20,000 which I have given you. That is for the building only.

Q. The sums which you have just given for that lot, wholly unimproved, and then with the improvements thereon that you described, are those the sums for which that property would sell at those times under ordinary circumstances, in your judgment?

29447 A. According to my opinion; yes, sir.

Q. Was it the full value of the property in your judgment?

A. It is what I consider full value; yes, sir.

Q. Why did you reduce the land value there?

A. Because occasionally we are bound to make adjustments in values in accordance with the sales and rentals, and so forth.

The Master: We had all that; that came out in his prior testimony.

Q. Lot 5, wholly unimproved, for the 1917 taxes.

A. $37,000 for 1917 and 1918.

The Master: How much for 1919?

29448 The Witness: The same for 1919. No change either way.

Q. And it is the same for 1918?

A. The same for 1918.

Q. And 1919?

A. Yes, sir.

Q. You did not assess it for the 1920 tax?

A. No, sir; Mr. Mungier assessed it.

Q. Did you describe what kind of a building was on Lot 5?

A. Yes, it was a storage building.

Q. Any machinery in it that you valued?

A. A small amount for machinery; yes, sir.

Q. Did you place a valuation on that?

A. Yes, sir.

Q. You have not given the value of that lot with the building on it?

A. I cannot give it to you, as I explained to you, for 1917 and 1918; but I can for 1919.

Q. Can you give me your best recollection?

A. Yes, $14,000.

Q. For 1917 and 1918?

A. That is the best of my belief and knowledge, 29450
for 1917 and 1918.

Q. 1919?

A. $19,000.

Mr. Ransom: How much?

The Witness: $19,000.

Q. Would you mind giving me the totals for Lot 1 again?

A. For which year?

Q. Each year as you gave it.

A. The total assessment on Lot 1 for 1917 and 1918—

Mr. Ransom: I object to his giving a total assessment including the machinery. 29451

The Master: Not including the machinery.

Q. No, without the machinery.

A. I have given you that, $93,000 for the land and $15,000 for the building, making $108,000 without machinery.

Q. And for 1919 it was what?

A. For 1919 $110,000 without machinery.

Q. That was the total?

A. Yes, sir.

29452 Charles Strobel, Direct.

Q. These sums you have just given me for Lot 5, Block 239, wholly unimproved, are these the sums for which in your judgment that lot would sell under ordinary circumstances?

A. Yes, sir.

Q. At those times?

A. At that time.

Q. Was it the full value of Lot 5 in your judgment, wholly unimproved?

A. What I considered full value; yes, sir.

Q. The sums you have given me for Lot 5, for
29453 the land plus the improvements you have spoken of, is that the sums for which in your judgment that lot would sell on those dates with those improvements thereon?

A. Yes, sir.

Q. Have you any other parcels that we asked about?

A. Yes, sir, lots up in Harlem, Blocks 1670 and 1704.

Q. Take 1670 first. That is Lot 1, Block 1670?

A. Yes, sir.

Q. What year did you value that?

A. For 1915 and 1916.

29454 Q. The lot occupies the whole block, does it not?

A. Yes, from 98th Street to 99th Street, and First to Second Avenue.

Q. 650 feet on the two, East 98th Street and East 99th Street?

A. Yes, that is it.

Q. 201 feet 10 inches on First and Second Avenue?

A. That is right; yes, sir.

Q. What value did you place on it for the 1917 tax? Was it for that tax?

A. No, 1915 and 1916.

Q. For the 1915 tax.

A. Yes, sir, on the land $525,000.

The Master: For both years?

The Witness: Both years; yes, sir.

Q. For the 1916 tax?

A. The same for the land.

Q. And that is all you valued that lot?

A. Yes, sir.

Q. You found some improvements on the lot?

A. Yes, gas manufacturing.

Q. For the 1915 tax?

A. Gas manufacturing. 29456

Q. Can you describe what you found on there?

A. The various buildings necessary for the production of illuminating gas, the scrubbers and so on.

Q. Any holders?

A. Holders also.

Q. Did you look these buildings all over?

A. I went through the plant; yes, sir.

Q. You knew what the buildings were made of?

A. I could see that.

Q. How did you value the plant?

A. Well, I put on so much for the buildings and so much for equipment and machinery.

Q. Can you give me the value you placed upon all the buildings you found? 29457

A. Yes, sir, $15,000.

Q. And for 1916, the value of the buildings?

A. Yes, sir, the same.

Q. Now, that value is for the buildings only?

A. For the buildings only.

Q. And covers all the buildings?

A. All the buildings within that block boundary.

Q. The sum that you have given for that lot and block for 1915 and 1916 taxes, wholly unimproved,

are those the sums for which that property would have sold at that time under ordinary circumstances?

A. Yes, sir.

Q. Was it the full value of the property in your judgment?

A. I considered it so.

Q. Now, the two sums that you have given for that lot and block unimproved and improved in 1915 and 1916, for the 1915 and 1916 taxes, were they the sums for which that property would have sold under ordinary circumstances with those buildings thereon?

29459 A. Yes, sir, in my opinion.

Q. Was it the full value?

A. I considered it so, yes, sir.

Q. And the value of those buildings, was that arrived at from your own independent judgment?

A. My own independent judgment, yes, sir.

Q. And the same is true of the land value?

A. Exactly.

Q. Did you value the equipment there for both years?

A. Yes, sir, I did.

Q. How did you do that?

Mr. Ransom: I object to the question; it is ob-

29460 vious that he is not qualified.

The Master: Objection sustained.

Mr. Chambers: I don't know.

The Master: You don't know, when he said to himself?

Mr. Chambers: I don't know how he values it.

Mr. Ransom: It is immaterial how he did it.

Q. Are you able to state the value of the machinery and equipment you found there for those two years?

Mr. Ransom: Objected to on the grounds previously stated.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Will you please give the value you placed upon the improvements other than the building upon that land for the 1915 and 1916 taxes?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you see Schedule S for those two years?

A. I looked at it, yes, sir.

Q. Did you put your initials on it after you looked at it? 29462

Mr. Ransom: I object to that as immaterial.

The Master: I will allow him to say whether he initialed the paper.

A. That was to show that I had looked it over, not for the purpose of showing that I accepted those figures.

Q. It was the tax report submitted to the department by the company?

Mr. Ransom: I object to that. It does not appear that it was any such thing.

By the Master:

Q. What was it, Mr. Strobel, what did you understand it to be? 29463

A. It was the report filed by the Consolidated Gas Company with the State Board of Tax Commissioners, which had been sent to us for information; that is all.

Q. That is what you understood it to be?

A. It was an element of value.

Q. But the paper, that is what you understood the paper to be?

A. As evidence of value, that is all.

Q. No, you understood it to be the original or a copy of the report made by the company to the State Tax Board?

A. Yes, sir.

Q. That was your understanding of it?

A. Sure.

The Master: If that is not the fact prove it in some other way, but that is his understanding.

By Mr. Chambers:

Q. Did you use that?

A. No; sir, I looked it over the same as I looked over a great deal of other evidence pertaining to real estate.

Q. And you saw on there the amounts given by the
29465 company for their piece of property?

Mr. Ransom: Objected to.

The Master: Objection overruled.

A. Yes, sir.

Mr. Ransom: There is no evidence that this document which he got from Mr. Cremen showed the amount given by the company. The company stands on its report, not what Mr. Cremen gave him.

Q. Before you placed your valuation upon the machinery there had you already consulted that tax report, and had the information therein contained in your mind and before you?

29466 A. I cannot tell at what particular time of the year I fixed the assessed valuation of this property, whether it was before or after I had seen this report, I assessed this particular section in the early part of the year, and most likely it was before I received that report.

Q. But you finally had the benefit of whatever was in that report?

A. As evidence.

Q. You looked at it?

A. I looked at it, yes, sir.

Q. Now, Block 1692, Lot 1, for what years did you assess that?

A. 1915 and 1916.

Q. Give me the dimensions of that lot, will you?

A. It is a parcel on the east side of First Avenue having a frontage of 201 feet 10 inches, running from 98th to 99th Streets; a frontage on 98th Street of 270 feet 2 inches; a frontage on 99th Street 370 feet 6 inches. It runs back to the marginal street.

Q. You visited that lot, did you, Mr. Strobel, before you placed a valuation upon it for the 1915 tax?

A. Yes, sir. 29468

Q. And the same for 1916?

A. 1916 also.

Q. What value did you place upon that lot and block for the 1915 tax?

A. $235,000.

Q. That is wholly unimproved?

A. For land only.

Q. And for 1916 wholly unimproved?

A. The same amount.

Q. Those were the only two years you assessed that?

A. Yes, sir, those were the only two years I assessed it. 29469

Q. Did you find any improvements upon the lot?

A. Yes, sir, a small building and a small tank.

Q. Did you value the small building for the 1915 tax separately?

A. Yes, sir.

Q. What value did you place upon it?

A. $4,000 for the building.

Q. And for the 1916 tax?

A. The same amount.

Q. Did you look the building over?

A. Yes, sir.

Q. And knew how it was made and what it was made of?

A. Yes, sir.

Q. What was the building used for, do you recall?

A. I think the upper part was used for an apartment. I think the caretaker for the plant lived upstairs, and I think the ground floor was used for the same purpose; a very small building.

Q. There wasn't any machinery in that building that you saw?

A. No, sir; there was a tank outside of the build-

29471 ing.

Q. Now, the sum which you have just given me for that Lot 1, Block 1692, for the taxes of 1915 and 1916, wholly unimproved, are those the sums for which in your judgment that piece of property would sell under ordinary circumstances?

A. Yes, sir.

Q. Are those valuations which you have given for those two years the full value of that property in your judgment?

A. In my judgment they were.

Q. Now, the sums which you have just given me for that lot and block, with the improvements thereon

29472 that you spoke of, for the two years of 1915 and 1916, are those the sums for which in your judgment it would sell under ordinary circumstances with those improvements thereon?

A. Yes, sir.

Q. Are those sums in your judgment the full value of the property as of those dates?

A. They were.

Q. What was that tank, a holder?

A. A small water tank about 20 feet in diameter; it was not much.

Q. Had you had any experience in anything of that kind?

A. Oh, yes, I assessed a large number of tanks over in Greenpoint of the Standard Oil Company.

Q. Had you made any study of tanks of that kind?

A. At that time I had a great deal of memoranda concerning the cost of construction of tanks.

Q. You looked up prices?

A. Yes, sir.

Q. And talked with builders?

A. Well, I received my information principally from the Standard Oil Company, which constructed a 29474
large number of tanks in Greenpoint.

Q. What was the tank used for?

A. I think for the storage of water, or tar.

Q. Will you please give the value you placed upon that tank?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: He said he had valued tanks of the Standard Oil Company and made some study of values before this.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to say, Mr. Strobel, what was in 29475
your opinion the value of that tank in 1915 and 1916?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

Q. You looked the tank over, did you, Mr. Strobel?

A. Yes, sir.

Q. Will you please state what value you placed upon the tank for the 1915 and 1916 taxes?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Now, Block 1704, Lot 5, will you please describe the area of the lot as you found it. In what year was it?

A. 1915 and 1916. It is a parcel which runs from 110th to 111th Street. It commences 100 feet east of First Avenue running down 506 feet on each street.

The Master: To Pleasant Avenue?

The Witness: Down to Pleasant Avenue.

The Master: That First Avenue front is where the Standard Company had its shops?

The Witness: Where the Standard Company
29477 had its testing shops. The parcel commences 107 feet east of First Avenue, and takes up the entire block excepting that First Avenue parcel.

Q. 107 feet instead of 100 feet?

A. Yes, sir.

Q. What value did you place upon that Block 1704, Lot 5, of the size described by you, for the 1915 tax?

A. $335,000.

Q. And you visited the property before you made your assessment?

A. I did.

Q. Now, for the 1916 tax what value did you place upon that lot?

29478 A. The same amount.

Q. Any other years that you valued it?

A. That is all.

Q. Can you, Mr. Strobel, now figure out for me, although you did not make the assessment that way, the value of that interior part of Lot 5 which would begin at a point on East 111th Street, 107 feet east of First Avenue, then running south to East 110th Street, 201 feet 10 inches; thence easterly on East 110th Street 225 feet; thence northerly to East 111th Street, 201 feet 10 inches; thence westerly 225 feet to the point or place of beginning, being a plot 225 feet on

29479

East 111th Street and East 110th Street, and the other two dimensions being 201 feet 10 inches?

Mr. Ransom: I object to that as wholly hypothetical and mythical, and no foundation in the case, no such assessment ever having been made, and no such official action ever having been performed, and this man not being now on the district, and not entitled to do it now.

The Master: What were your units?

The Witness: $8,000 a lot on 111th Street, and $6,000 on 110th Street; plus plottage.

29480

The Master: On the basis of lots 25 x 100?

The Witness: Yes, sir.

The Master: So that taking that 225 feet you would get—

The Witness: Yes, sir, it would be simply a matter of multiplication and adding a little plottage.

Q. How much plottage?

A. I should say about twenty per cent.

Q. Your lots are 25 x 100?

A. Yes, sir.

The Master: Did you add twenty per cent for plottage there?

29481

The Witness: Taking the whole parcel I added 25 per cent.

The Master: But for this you would add twenty per cent.

The Witness: Yes, for a smaller plot I would not add so much.

Q. You think twenty per cent would be right?

A. In my opinion that would be sufficient for that portion of this lot.

Q. Now, that would be the same for both years in your opinion?

A. Yes, sir.

Q. I will ask you, if the units you have just given for that plot, plus twenty per cent for plottage, was correctly computed, would that in your opinion be the value of that piece of property as of those dates? A. I think so.

Q. Would it be the sum for which it would sell under ordinary circumstances on those dates?

A. It is the sum for which I appraised other property in that block.

Q. Did you find some improvements on the lot, Mr. Strobel?

29483 A. Yes, sir, a few old stables, and a coal pocket, and frame sheds, and trestle for coal conveyance.

Q. Can you recall now upon what parts of the lot the different buildings that you have just mentioned were?

A. Yes.

Q. Where were they?

A. On the westerly end of the lot adjoining the big 10-story building there was an improvement 50 x 200, straight through.

Q. That would be on the 225-foot lot that I have asked you about?

A. Yes, sir. Then the coal pocket is down on the

29484 easterly end of the block.

Q. That would be on this 281 feet on Pleasant Avenue?

A. Yes, sir.

Q. What else?

A. The trestle for the conveyance of coal from the bulkhead would run across there (indicating).

Q. Can you give me the value that you placed upon the buildings that were on the 225-foot plot?

A. I have not separated them, I assessed the plot as a whole. I placed $50,000 for all the improvements on that whole block.

Q. Was that the same for both years?

A. The same for both years, yes, sir.

Q. You cannot, can you, separate and give me the value of the buildings on the 281 foot part of the lot, and the 225 foot part?

A. Well, the biggest portion of that value is for the coal pocket on the easterly end of that block, which is of fireproof construction. The buildings on the westerly end of the block adjoining the ten-story office buildings are not so very much, one or two stories high, just four walls roofed over; they haven't any great value. 29486

Q. Old buildings?

A. Yes, sir.

Q. Were they run down?

A. I would not say they were run down, they were kept in fair condition for the use to which they were put, storage, I think, and perhaps for some other purpose.

Q. Are you willing to split that up and tell me what the value was?

A. Without going into details I would say that those buildings perhaps would not be worth more than on the basis of about $1 a square foot. That is without going into details, just as an offhand statement. 29487

Q. How much would that be?

A. About $10,000, a little more or less; I can't give you the exact figures now.

Q. For the buildings on the 225 feet that we were speaking of?

A. There was another small building on that block, plus a frame shed, which would add a few more dollars to that. In any case, it would likely be less than $15,000, and $35,000 for the improvement on the other end of the property, making $50,000.

Q. Would you say that $15,000 was the full value, in your opinion of the buildings on that 225 foot plot for those two years?

A. Speaking at the present time without any definite information I should say so, as a general statement.

Q. That is what it would sell for in your judgment, under ordinary circumstances with those buildings on it, plus the land value?

A. Yes, sir.

Q. Now, Block 1682, Lot 8, that is a little triangu-
29489 lar piece of property?

A. A vacant triangular parcel on the westerly end.

Q. What is the frontage?

A. 73 feet 5 inches, running back 80 feet 10 inches to a point.

The Master: That is the point is back 80 feet 10 inches?

The Witness: Yes, sir, running north from 109th Street.

Q. You valued that for the 1915 and 1916 taxes, did you?

A. Yes, sir.

Q. Were there any improvements on it?

29490 A. No, sir.

Q. What value did you place on it?

A. $10,000.

Q. For each year?

A. Yes, sir.

Q. Was that in your opinion the full value of that piece of property unimproved?

A. Yes, sir.

Q. Is that the sum for which it would sell in 1915 and 1916, in your judgment under ordinary circumstances?

A. That is my opinion, yes, sir.

Q. You visited the property?

A. I did.

Q. Now, Block 1682, Lot 11, give me the dimensions as you found it in 1915?

A. Running from 109th to 110th Streets, having a frontage of 201 feet 10 inches on First Avenue; running back 401 feet 7 inches on 109th Street, and 475 feet on 110th Street.

Q. With this little lot 8 taken out there?

A. Yes, sir. Without that Lot 8 it would be a perfectly regular plot.

Q. You valued that, did you, for the 1915 tax? 29492

A. Yes, sir.

Q. What value did you place upon it?

A. $360,000 for the land.

Q. For the 1915 tax?

A. Yes, sir.

Q. Now, the 1916 tax unimproved?

A. The same amount.

Q. Are those sums which you have given for 1915 and 1916, the sums for which in your judgment the property would sell under ordinary circumstances if wholly unimproved?

A. Yes, sir.

Q. And is it the full value of the property as of those dates? 29493

A. In my opinion it was.

Q. Did you find some improvements thereon?

A. Yes, sir, two buildings and two large gas tanks.

Q. Did you separate the buildings and value those as a separate unit?

A. I did.

Q. For each year?

A. For each year.

Q. Give me, will you please, Mr. Strobel, the value you placed on the buildings excluding the holders or gas tanks?

A. The value of the buildings, $20,000 for each year.

Q. Did you visit the property?

A. I did.

Q. And saw the buildings?

A. Yes, sir.

Q. Now, at the time of your visit, you knew the materials from which they were made?

A. Yes, sir.

Q. And the layout of the lot?

A. I did.

29485 Q. Now, the sums which you have given for that lot with those improvements thereon, are those the sums for which in your judgment it would sell under ordinary circumstances at that time?

A. They were.

Q. And is it the full value of the land and improvements as of those dates, in your judgment?

A. In my opinion, sir.

Q. Now, the holders, you placed a separate value upon the holders for those two years?

A. I did.

Q. Are you able to state what values you placed on the holders for those two years?

29496 Mr. Ransom: Objected to on the grounds previously stated.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. I ask you to give the value which you placed on the two holders for 1915 and 1916 taxes?

Mr. Ransom: Objection on the same ground.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Is that all the property?

A. That is the last parcel, yes, sir.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Strobel, on this Lot 5, Block 1704, do your records, from your recollection, show a building there approximately 200 by 60?

A. I think 50 by 200, fronting 50 feet on each street, running straight through.

Q. Is that one of the buildings which you described as an old building?

A. I could not exactly say it was an old building, no.

Q. Was it an old building in 1915 and 1916?

A. I do not know how old the building was at that 29498
time that I assessed it.

Q. Was it a building of steel and re-enforced concrete?

A. I do not think so, because I found it was only one story high, and I think part of it has a steel truss roof, and part of it was two stories high in the middle.

Q. You assessed this building in 1914 for the 1915 taxes?

A. Yes, sir, in the summer of 1914 for the 1915 taxes.

Q. Was it an old building when you were there then?

A. Well, I would not call it an old building, because 29499
it was in good condition for the purpose for which it was being used.

Q. Didn't you ascertain that that building was first built as a stable in 1912 of steel and re-enforced concrete and then rebuilt as a garage in 1914, the very year you were there?

A. I believe it must have been done before I got around there, sir.

Q. What value did you put on that building?

A. I did not value the building separately. I valued all the buildings on that whole property, and I ap-

praised them at $50,000. I was merely asked to apportion the amount which I appraised this property, this particular block and lot, and I did it, to the best of my belief and knowledge at the present time, because I have no definite information just now as to the actual condition of that building at that time.

Q. Can you give me any indication as to the value which you put on that building alone?

A. Well, to the best of my belief and knowledge, according to what I have stated there.

Q. How much per square foot?

29501 A. That would be around I guess a little over a dollar a square foot, perhaps a dollar and a quarter a square foot.

Q. And that would make how much for this garage building?

A. Why, for that together with the little adjoining building about $15,000.

The Master: You said for this garage building a little over $10,000.

The Witness: And I added $35,000 for the re-enforced concrete coal pocket on the other end of the plot.

The Master: He is talking from recollection, and it may be that when he made that $50,000 the $35,000 was on this building and the $15,000 on the other building.

29502

Q. If it appears from other testimony in this case that this building was first built as a stable in 1912 and then rebuilt as a garage in 1914, the structure being all steel and re-enforced concrete, at a cost of more than $60,000, would you still call it an old building?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, improper in form, not based upon records in the case.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. Would you?

A. Would I consider the building old under the conditions which you have described?

Q. Yes.

A. No, sir.

Q. Now, on Block 1692, Lot 1, you did not have any difficulty in finding a dwelling house there, two stories, on the northwest corner of that property, did you?

A. It is the southeast corner of 99th Street. 29504

Q. Yes. You did not have any difficulty in finding that?

A. No, it was right there.

Q. And you thought it was worth $4,000?

A. In my opinion it was worth about that.

Q. I think it is northwest corner?

A. No, it is the southeast, First Avenue runs east to the marginal street.

Q. It is the northwest corner of the block you assessed?

A. Oh, yes, if you look at it that way. It is the southeast corner of First Avenue and 99th Street, yes, sir. 29505

Q. Did you value these properties on the basis of what it would cost to reproduce them at the time you assessed them?

A. No, sir.

Q. You valued them solely from the viewpoint of what they would sell for?

A. For whatever value they added to the land, and what they would sell for, yes, sir.

Q. Did they add any value to the land except what they would sell for?

A. Well, that is the value they added to the land.

29506 Walter R. Addicks, Direct.

WALTER R. ADDICKS, recalled as a witness for the defendants, testified as follows:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Mr. O'Brien: Your Honor, I am only going to require Mr. Addicks for a few minutes today, but I won't conclude with him at this time.

The Master: Go ahead and ask the questions.

Mr. O'Brien: In other words, I do not want to confine his direct-examination to today.

The Master: You can call him again if you have another line.

29507 Q. Mr. Addicks, did you come pursuant to a subpoena *duces tecum* today, to this court?

A. I have.

Q. Have you brought with you the minute books of the company covering the period mentioned in the subpoena?

A. Yes, sir.

Q. And will you produce them?

Mr. Ransom: They are in court.

The Master: They are produced, they are here. You say they are here, Mr. Addicks?

The Witness: They are.

29508 Q. And they cover from—a period from what year to what year?

A. For the years covered by the subpoena.

The Master: The witness has produced the books you demanded.

The Witness: January 1, 1905, to January 6, 1920.

Q. And that is the subpoena (indicating)?

A. Yes.

Mr. O'Brien: I offer it in evidence.

Mr. Ransom: I object to it. There is no occasion for its going in evidence.

The Master: What does it tend to prove, Mr. O'Brien?

Mr. O'Brien: Well, it proves he is here under subpoena and not a willing witness.

The Master: He has already testified to that. Why do you want the subpoena marked in evidence and placed in this record?

Mr. O'Brien: To complete the record.

The Master: What purpose is to be accomplished by it?

Mr. O'Brien: Complete the record.

The Master: Objection sustained. 29510

Q. And these minute books you have brought are the minute books of the Executive Committee of the Consolidated Gas Company of New York from January 1, 1905, to January 6, 1920, Mr. Addicks?

A. Yes.

Mr. O'Brien: I offer these books in evidence, your Honor.

Mr. Ransom: Objected to. The offer as made does not bear on any issue in the case, incompetent.

The Master: What do they prove or disprove, Mr. O'Brien?

Mr. O'Brien: The minute books of the Executive Committee, your Honor, are very important; they have been relied upon by officers of the company in the expenditure of money; they go to the very vitals of this case in covering the contracts for the very things that make up the important factors of expense. 29511

The Master: What do you prove by them?

Mr. O'Brien: What do I prove by them?

The Master: Yes, what is the purpose of your offer?

29512

Mr. O'Brien: The purpose of the offer is to prove the contracts that were made, the date they were made, the discussions, if any, that were held at the time they were made, and the directions, if any, made to officers of the company in connection therewith.

The Master: So that what you want is any reference in any of these Executive Committee meetings to the oil contracts.

Mr. O'Brien: Well, I do not confine it to that, your Honor, and I respectfully submit that it is not quite proper to submit the defendants' counsel to cross-examination when he proposes to offer in evidence the minute books of the Executive Committee of this company that have been referred to so frequently in the evidence in this case.

29513

The Master: You will tell me what you want these for as well as any other paper when you offer it in evidence, and if I do not see the purpose of it and how it is going to help me decide this case, it won't go in, and you might as well understand that now as at any other time.

Mr. O'Brien: I take an exception to your Honor's attitude and statement.

29514

The Master: If you want Mr. Addicks to tell you what was said at every Executive Committee meeting from 1884 to date, about any contract that was entered into or handed to them for approval, I shall have him take his minute books and read it in. I am not going to permit these minute books in evidence for a purely fishing purpose without any definite purpose pointed out to the Court.

Mr. O'Brien: I object to your Honor's assumption. I take exception to the comment made by your Honor as to fishing excursions. These books are offered in evidence as being the official

29515

transactions of an Executive Committee appointed by the Board of Directors or Board of Trustees of this company to transact its business. The supplies of the company that have entered into the cost of making gas, the transactions of this company of a fiscal character that have to do with its prosperity or its lack of prosperity are all, I would assume from the statements made previously by witnesses in this case, recorded in these official books. Now, primarily and today I am concerned with the transactions that have to do with the purchase of coal and oil and other supplies.

29516

The Master: Mr. Addicks, get your books and tell us any references in any of these committee meetings to the purchase of coal and oil or other supplies.

Mr. Ransom: There are many hundreds of them.

The Master: I don't care.

Mr. Ransom: We furnished copies of them.

The Master: Mr. O'Brien is entitled to ask this witness what was said or what was done, but he is not entitled to have these books go in as he offers them.

29517

Mr. O'Brien: Well, I assume from that that your Honor has adopted the position that there may be extraneous matters in the books.

The Master: Yes.

Mr. O'Brien: Well, I don't want that.

The Master: And it is none of your business.

Mr. O'Brien: I don't want any extraneous matters, your Honor.

The Master: But you are offering them when you offer the book?

Mr. O'Brien: Why, naturally I am offering them. I am trying to show counsel for complainant how to expedite this case.

29518

The Master: I will tell you what he will do. Mr. Addicks, I wish you would have prepared a certified copy of every resolution or reference in these minutes to any contract for coal oil or other supplies, so that instead of your looking through them now, you can put in a short form giving Mr. O'Brien a certified copy of every resolution therein.

Mr. Ransom: That was prepared at Mr. O'Brien's request several months ago, was certified and was furnished to Mr. O'Brien.

The Master: Is that so, Mr. O'Brien?

29519

Mr. O'Brien: The first part of your Honor's statement I did not get.

The Master: I did not have any first part. Mr. Ransom said that these were furnished to you by the complainant certified copies of every resolution bearing upon every oil and coal contract. How far back?

Mr. Ransom: Running back to 1905, I think, and Mr. Addicks will correct me if I am in error.

The Master: How far back did they go?

The Witness: I say they were prior to 1905.

Mr. Ransom: I recall them to 1905.

The Master: Did you get them?

29520

Mr. O'Brien: I was handed a copy of a paper that they said was a copy of portions of the minutes of the company.

The Master: I want to know whether Mr. Addicks furnished you—

Mr. O'Brien: I will tell your Honor—

The Master: Will you wait a minute. Did Mr. Addicks or the complainant's counsel furnish you with what purported to be a correct copy of every resolution for many years back bearing upon every oil or coal contract? Did you get that?

29521

Mr. O'Brien: I got a paper from them that purports to be and was said by the man who handed it to me to be an excerpt from the minutes referring to coal and oil contracts, and at the end of the paper in question a statement of the members of the Executive Committee who were present at the meetings referred to in the preceding pages.

The Master: Yes.

Mr. O'Brien: Now, the coal and oil contracts are not all of the business recorded in these Executive Committee minutes that I want.

The Master: What else do you want?

29522

Mr. O'Brien: I want all the resolutions that have to do with the purchase of supplies and have to do with the transaction of the business of the complainant company.

The Master: In what respect?

Mr. O'Brien: I want to say to your Honor here for the purposes of expediting the examination this morning, so that we will not needlessly waste time, that at the present moment I do not intend to keep Mr. Addicks long on the stand. I want particularly today the—

The Master (interrupting): I don't care how long you keep Mr. Addicks on the stand.

29523

Mr. O'Brien: Well, you seem to be quite excited here.

The Master: I am not excited, but I will not let you get stuff into this record for newspaper notoriety and not for the purposes of this case.

Mr. O'Brien: I am going to protest against that statement, your Honor.

The Master: Yes, protest.

Mr. O'Brien: I will protest, and I will protest against it when your report is submitted to the District Court Judge.

The Master: That is correct. Now, you are going to show me the usefulness of any piece of evidence you offer or it don't come out, and it don't go in the record.

Mr. O'Brien: You have said that many times in this case.

The Master: And I will repeat it, and don't you forget it.

Mr. O'Brien: How about the offer, your Honor?

The Master: I sustain the objection to the
29525 offer as made.

Mr. O'Brien: Exception.

Q. Mr. Addicks, you have recorded in these minutes here the approval of the Executive Committee of the expenditures of all moneys, have you?

A. Of all matters submitted to the Executive Committee for their approval.

Q. Well, does this—besides coal and oil, what other supplies do the resolutions cover?

A. They cover contracts, large contracts for gas ranges, for apparatus of the plant, and for construction work generally. They would not, naturally, cover any specific expenditures for labor or manufacture ex-
29526 cepting insofar as they were included in the audit for the week.

Q. The matter of bills that are approved by the Executive Committee does not form part of the transactions in detail of the minutes?

A. No, approval of bills, individual bills.

Q. As I take it, you have recorded in these minutes the major operations of the company in the matters of expense?

A. Yes.

Mr. O'Brien: Well, as to that, your Honor, the resolutions of any kind that relate to the

29527

contract for construction of buildings, the purchase of supplies of any kind or nature, and the expenditure of money in connection with the gas making business, I offer these books now in evidence.

Mr. Ransom: Objected to on the grounds previously stated.

The Master: I will ask the witness if he is prepared to read from these minutes or to prepare an extract from them. I am not going to let you get into evidence a book that has matters in it that do not concern you or me or this case, but I will let you get, or I will get for you, every 29528 item in these minutes that bears in any possible way upon the issue in this case, even though I doubt whether they do.

Mr. Ransom: The complainant offers and will have prepared any further extracts which the Master feels should be prepared in any of these exhibits.

Mr. O'Brien: The complainant is not conducting my examination of this witness. Your Honor will perceive you have perhaps lost sight of the fact that the offer just made of these books was confined and limited to anything revelant, and could not under any interpretation extend to ex- 29529 traneous matters.

The Master: But you offered the books, didn't you?

Mr. O'Brien: I offered the books here so far as they relate to the subject that I have referred to.

The Master: If you will say that you offer that part of the books that refers to it, I will have that part of it extracted and receive that in evidence, but I won't receive the books for the purpose of using part of it and having in this record any part that does not belong there.

29530

Mr. O'Brien: You have done that before in this case.

The Master: Yes, and I am going to do it again.

Mr. O'Brien: Will you state the reasons why you have made such rulings?

The Master: Because it has nothing to do with this case, and I am not going to lumber up this record with matters that do not belong here.

Mr. O'Brien: We are lumbering it up with talk this morning.

The Master: Have you any further questions
29531 of Mr. Addicks?

Mr. O'Brien: I offer such portions of the minute books as relate to the contracts for construction work, purchase of supplies of any kind, in connection with the complainant company.

The Master: Yes, the witness is directed—

Mr. O'Brien: And when oil was purchased for affiliated companies, as to all.

The Master: The witness is directed to have prepared, if not already prepared, a correct copy of every resolution bearing upon the matters referred to by Mr. O'Brien, so that he can swear, when recalled, that that is a correct copy of these
29532 minutes and precisely the same as if the minutes themselves were in, and I will receive that.

Mr. O'Brien: For the purpose of my examination this morning, your Honor, that is all I care to offer at this time. I will subsequently make an offer of other portions of the books, but I do not want to delay the examination this morning to take up that matter and controvert it with your Honor. I mean to say, the question of the expenditures of the various fiscal matters in connection with the company, the uses of company moneys for affiliated companies and so on, which

under our contention is part of the case, but which your Honor may rule are more or less extraneous and have to do with the non-operating investments. That I will offer later, and I do not want to present it today.

The Master: I told you you could recall Mr. Addicks or any other witness a dozen times if you want to.

Q. Mr. Addicks, have you got present now, or have you with you, a certified copy of the minutes that you referred to?

A. No, sir. 29534

Mr. Ransom: No, sir.

Q. Have you got a copy—

Mr. Chambers: I suggest we take a recess then for these copies.

The Master: Go on, next witness, Mr. O'Brien.

Q. Mr. Addicks, did you have this collection of excerpts made from the minutes of the Executive Committee (handing papers)?

Mr. Ransom: Those being a copy produced by Mr. O'Brien as to oil?

The Witness: Both coal and oil.

The Master: The question is did you have them prepared? 29535

The Witness: I did.

Q. That is a true copy of all of the transactions or all of the resolutions and transactions of the Executive Committee for the period from April 5, 1904, down to date?

A. Yes, sir.

The Master: Down to the date when that was prepared?

Q. Yes, down to the date when this was prepared, November 5, 1919?

A. I have no doubt it is a correct copy.

The Master: You have not checked it up yourself?

The Witness: I have not checked that particular copy with the original; otherwise I would say it is a correct copy.

Q. You did make the copy yourself?

A. Yes.

Q. And you placed some certification on it, did you?

A. Yes, I put my initials on every one.

Q. And does it contain all the resolutions and transactions relating to the purchase of coal and oil during the period mentioned?

29537

A. Within the period mentioned, yes, it does.

Q. And does the list appended to this paper of the dates and the names give the names of the members of the Executive Committee, and who were present on the dates mentioned?

A. It does.

Q. At the meetings of the Executive Committee?

A. At the meetings of the Executive Committee.

Q. And the names that are here set forth are names of men who were actually at the times mentioned members of the Executive Committee?

A. Yes, sir.

29538

Mr. O'Brien: I will ask that it be marked for identification.

Marked Defendants' Exhibit AA48 for identification.

The Witness: I have to qualify that. I appear as being present, but I am not a member of the Executive Committee.

Mr. O'Brien: Yes. Well now, do I understand your Honor that there would be no permission granted to inspect the minutes to prove that this is a true copy of the original?

The Master: That is what I said, yes.

29539

Mr. O'Brien: And no inspection permitted, the books will not be received in evidence?

The Master: Correct.

Mr. O'Brien: For the purpose of finding whether there are other resolutions or other transactions relating to the supplies I have mentioned?

The Master: Correct.

Mr. O'Brien: I take an exception.

The Master: If you believe that Mr. Addicks is perjuring himself, you get the District Attorney to call for the books and look at them in the Grand Jury room.

29540

Mr. O'Brien: Well—

The Master: Well, that is the answer to it. You represent the District Attorney of New York County.

Mr. O'Brien: You are the Master and I am counsel here, and I cannot comment upon it.

The Master: You represent the District Attorney of New York County.

Mr. O'Brien: I do not think it is necessary to reflect upon the case in that way.

The Master: Next question. If I represented the District Attorney of New York County in a lawsuit and I thought a witness had lied about something, I would get the proof quick enough.

29541

Mr. O'Brien: Your Honor is putting an innuendo in this case that is not in it.

The Master: You put it in. You said you wanted to look at the minute book to see whether Mr. Addicks was telling the truth.

Mr. O'Brien: I am asking whether the regular procedure of law courts is going to be followed in this case.

The Master: There is a little difference in your mind and mine as to what the regular pro-

cedure is in a regular law court. You may think it is a Municipal Court case, and I am speaking of this kind of a case.

Mr. O'Brien: I ask that the comment just made by the Master be excluded from the record.

The Master: The request made by counsel will be placed on the record, and the statement made by the Master will remain on the record, and an exception will be allowed.

Mr. O'Brien: And I note an exception.

29543 Q. Mr. Addicks, did you incorporate in these excerpts the discussions that were had, or was that customary in the minutes to record the discussions had?

A. I do not recall any discussions being recorded.

The Master: Is it the habit of your Executive Committee to record the discussion of the resolution of a man, or a motion as made?

The Witness: No.

The Master: In other words, do you have a stenographer take down what is said in support of or against a suggestion or proposition that is made?

29544 The Witness: No, sir. I am the only one present to record, and I am not a stenographer.

The Master: And you record the suggestion or motion made and the result?

The Witness: I do.

Q. Mr. Addicks, do you record minority votes, if there are any?

A. I stated before I never knew of a minority vote occurring.

Q. Well, are there other record, statements, comments, in the minutes that you have produced in relation to coal and oil contracts and the purchase of

other supplies and for construction work that you have not incorporated in this collection of excerpts?

A. There are none.

Mr. Ransom: I object to the question. These extracts, as they are here, do not purport to relate to anything except coal and oil.

The Master: That is what I understood the question related to.

Mr. Ransom: No, he said construction.

The Witness: I so understood it.

The Master: He meant oil and coal.

Mr. O'Brien: I withdraw that, then. That is 29546
all at this time, Mr. Addicks.

GEORGE B. CORTELYOU, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Cortelyou, how long have you been connected with the complainant company?

A. Nearly eleven years.

Q. And how much stock do you hold in it? 29547

Mr. Ransom: Objected to as immaterial.

The Master: How does that bear upon this case, the stock Mr. Cortelyou holds? What does it tend to prove or disprove?

Mr. O'Brien: It shows his interest in the company.

The Master: Why, he is president of the company: that is a pretty good indication of his interest, is it not?

Mr. Ransom: We admit he is interested.

The Master: Objection sustained.

Mr. O'Brien: I do not want to take up the time of the Court with a lot of side discussion, your Honor, but I think we can save a lot of time if my examination of this witness is not interrupted.

The Master: I am not interrupting it; I am sustaining an objection, that is all. I do not see any purpose in asking Mr. Cortelyou about his stock ownership.

Mr. O'Brien: I note an exception to your Honor's ruling.

29549 The Master: Next question.

Q. Have you been president since you became connected with the company?

A. During the entire time.

Q. You have some stock in the complainant company at the present time?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have you any financial interest in the company outside your being the president of it?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

29550 Mr. O'Brien: Exception.

Q. You are president at the present time of the complainant company?

The Master: He said so three times. Say it again, Mr. Cortelyou.

A. I am.

Q. What offices do you hold in the affiliated companies?

A. Director.

Q. Will you state what companies you are a director of?

Mr. Ransom: I object unless the question is limited to gas companies.

The Master: Affiliated companies.

Mr. Ransom: Yes.

The Master: You may answer that, Mr. Cortelyou.

Mr. O'Brien: I am asking the witness what the affiliated companies are and what he is a director of, or an officer of.

The Master: Of the affiliated companies?

Mr. O'Brien: Yes.

Mr. Chambers: Yes.

A. Do you want me to enumerate the companies?

Q. Yes, sir. 29552

A. Consolidated Gas Company, Astoria Light, Heat & Power Company, Central Union Gas Company, New Amsterdam Gas Company, Northern Union Gas Company, Mutual Gas Light Company, Standard Gas Light Company, East River Gas Company of Long Island City, Westchester Lighting Company, Northern Westchester Lighting Company, Peekskill Lighting and Railroad Company, New York & Queens Gas Company, New York Edison Company—that is electric; United Electric Light & Power Company, New York & Queens Electric Light & Power Company, National Coal & Coke Company, Municipal Lighting Company. I may have omitted one or two. 29553

Mr. Ransom: The New York & Queens Gas Company.

The Witness: I included that.

The Master: He gave that.

Mr. Ransom: You mentioned the Light & Power Company.

The Master: He mentioned the New York & Queens.

The Witness: Yes, I mentioned the New York & Queens Gas Company.

Q. Mr. Cortelyou, what offices do you hold in these companies, where you do hold an office?

A. I am a director of these companies.

Q. Do you hold any other official position in any of them?

A. I do not.

Q. What if any other companies or corporations are you an officer or director of?

Mr. Ransom: I object as immaterial and no bearing upon any issue in this case in the form it is asked.

The Master: I will allow that question.

Mr. Ransom: Exception.

29555 A. I am a director of the New York Life Insurance Company; I am a director of the National Surety Company.

Q. Are you a director or an officer of any bank?

A. I am not.

Q. Do you own any stock in any oil companies?

Mr. Ransom: Objected to as immaterial.

The Master: I do not see that we are interested in any oil companies except the Standard Oil, are we? Are we interested in any oil companies other than the Standard Oil?

Mr. O'Brien: Oh, yes, your Honor.

The Master: How? Suppose Mr. Cortelyou
29556 says he is a stockholder in this thing I saw advertised today—I think it was the Mexican Oil Company—how does that help us?

Mr. O'Brien: Oh, yes, I noticed that advertisement of the law firm.

The Master: I did not notice that part of it.

Mr. O'Brien: Oh, yes, it is in the morning papers—Whitman, Ottinger & Ransom, the advertisement in there.

The Master: I really did not see that; I did not notice that. I noticed the Mexican Oil.

Mr. O'Brien: They were afraid of what was going to happen to them in this case so they got a new business.

The Master: Let us stick to the oil business. Suppose Mr. Cortelyou says he does own some stock in that company, how does that bear upon this issue?

Mr. O'Brien: Well, it is a matter that may come into play during the examination of the witness.

The Master: Don't you think it would be idle curiosity to know just what oil companies he is interested in? 29558

Mr. O'Brien: Why, not at all. Your Honor is proceeding here with an entirely wrong mental attitude.

The Master: But you have to show me.

Mr. O'Brien: There is no reason when we have these officers here that everybody should be shivering and shaking around, as if something terrible was going to happen.

The Master: I do not see anybody shivering or shaking. Who is shaking?

Mr. O'Brien: You have an outer guard and an inner guard on every question that is being asked here. I am asking the question whether this company is in the business of buying oil—gas oil. 29559

The Master: Then I will make a very plain ruling. Objection sustained. You ask another question.

Mr. O'Brien: That is your privilege.

The Master: Which I will exercise.

Mr. O'Brien: And I will note an exception.

Q. Do you hold any stock, Mr. Cortelyou, in any oil companies that sell gas oil?

29560

Mr. Ransom: Objected to as immaterial, no bearing on the issues in this case.

The Master: Objection sustained. I will let you ask if he owns stock in any oil company which directly or indirectly, so far as he knows, sells any gas oil to this complainant company.

Mr. O'Brien: Your Honor, I intend to ask this witness a good many questions about the oil transactions of this company.

The Master: Then go on and ask them.

Mr. O'Brien: I hope I will not be interrupted.

The Master: But there is no use making a

29561 speech about it.

Mr. O'Brien: We have some testimony in here about letters that were sent to the Sun Company and to one or two other companies, by Mr. Addicks, who claims that he had the oil business of the company to take care of. Now I contend it is perfectly proper—I do not intend to stress it here, to take up a whole lot of time—

The Master: What do you want to get at?

Mr. O'Brien: But it is perfectly proper to find out how much Mr. Cortelyou owns of oil companies, and how far he may have gone and should have gone in the matter of making proper

29562 contracts for gas oil.

The Master: Ask him. If you do not ask him I will ask him.

Mr. O'Brien: I have asked him a question, your Honor.

The Master: No, you have not asked a question that bears even remotely on that kind of a proposition.

Mr. O'Brien: Your Honor ruled out that question as to oil companies?

The Master: Yes, I sustain the objection.

Mr. O'Brien: Exception.

Q. Do you hold any stock in the National City Bank?

The Master: How is that important?

Mr. O'Brien: They have fiscal relations with the complainant.

The Master: What will that have to do with the cost of producing and distributing gas?

Mr. Ransom: I shall object to the question as quite immaterial.

The Master: How will that bear in any possible way, shape or form?

Mr. O'Brien: A depositary of the company. 29564

The Master: What difference does that make?

Mr. O'Brien: Well, I am not going to argue on it, your Honor. You can make your ruling and I will take an exception.

The Master: Can you point out to me how it will tend to prove or disprove any fact at issue in this case? If you can I will allow it; if you cannot the objection is sustained.

Mr. O'Brien: I object to the attitude of the Court, with every question that I ask this witness asking me what it is going to prove.

The Master: Then take your exception.

Mr. O'Brien: The Courts usually make their 29565 own rulings on questions.

The Master: I have expressed myself many times that some things the Courts usually do I will not do. Go ahead.

Q. The National City Bank is a depositary of the complainant company, Mr. Cortelyou?

Mr. Ransom: I shall object.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Large sums of money are deposited by the complainant company in the National City Bank?

29566 George B. Cortelyou, Direct.

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Do you own any stock in the National City Company?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

The Master: I am here to find out what the invested capital of this company is and what it costs them to make and distribute gas, that is
29567 all.

Mr. O'Brien: Your Honor may limit the scope of this inquiry, but moneys of this company are deposited in these institutions. The question of the amount of interest they get on deposits is in this case.

Mr. Ransom: The witness has testified that he was not identified or connected with any bank.

Mr. O'Brien: I did not ask him that, Judge Ransom. I have asked the witness if he was an officer or director.

The Master: Then the point of your question is as bearing upon the amount of interest they
29568 received?

Mr. O'Brien: That is right.

The Master: Whether that was adequate?

Mr. O'Brien: That is right.

The Master: I will allow it, then.

The Witness: I am not.

Q. And of the National City Company?

A. I am not.

Q. You are not the owner of any stock?

The Master: Any time you show me where it has any possible bearing on the issue, I will allow it.

29569

Mr. O'Brien: Well, the purpose of these questions is obvious.

The Master: No, they were not to me. Where they are obvious I will rule them in.

Mr. O'Brien: I will not take up the time with all these details, your Honor, but we have a record and a reference made, exhibits in this case, and in the testimony, as to the manner in which the moneys are deposited, where they are loaned, where they are borrowed—and all those matters come into this case.

29570

The Master: Yes, a good many have been on cross-examination that I am not going to let you meet by testimony now. Go ahead.

Q. Mr. Cortelyou, your membership in the Executive Committee of the complainant company runs back to about what time?

A. During the period I have been here, eleven years.

Q. And you have been present at various meetings of the committee where resolutions were passed and determinations made to purchase oil and coal and other supplies?

A. I have.

29571

Q. We might assume, without going into the details just now of this excerpt furnished me by Mr. Addicks, that you were present at the various meetings of the complainant company over the term since you have been connected with the company, at which it was determined that contracts would be made for the purchase of oil with the Standard Oil Company of New Jersey?

A. Speaking generally, yes.

The Master: Wherever your appearance is noted?

The Witness: Wherever my appearance is noted.

29572 George B. Cortelyou, Direct.

Q. Yes. And you are, of course, cognizant of the part, the important part in the expenses of the company, that the purchase of gas oil plays?

A. I am.

Q. And how closely it is related to the question of the constitutionality of the statute assailed in this action?

Mr. Ransom: I object to that. That is a legal question.

The Master: I will allow it. It is another form of asking Mr. Cortelyou if he appreciates
29573 the item of oil in the cost of making and distributing gas.

A. Yes, sir.

Q. And you know that the difference of a small amount in the purchase price has a very direct and intimate relation with the establishment of the constitutionality of the statute?

Mr. Ransom: I object to the question as incompetent in form.

The Master: Overruled.

Mr. Ransom: Exception.

The Master: It bears upon Mr. Cortelyou's appreciation of the fact that a very small change
29574 in the price of oil would make a substantial change in the result of the operation. Isn't that so, Mr. Cortelyou?

Mr. Ransom: That is not quite—a very large change in the price would.

The Master: That is another way of putting it. I will allow it.

Mr. Ransom: A very large change would.

The Master: My recollection is there was some testimony that one cent a gallon would make a difference of five cents in the cost of making the gas, and it is based on that recollection that I allow this testimony.

Mr. Ransom: On that basis there would still be a very large change.

The Master: I will let Mr. Cortelyou answer this question.

A. Will you repeat that question?

Q. And you know that the difference of a small amount in the purchase price has a very direct and intimate relation with the establishment of the constitutionality of the statute?

A. Yes, it might have. I ought to qualify that, because it would have to reach a certain stage before it would have that intimate and direct relation that 29576
you speak of.

Q. Well, you have read the complaint in this action, have you, Mr. Cortelyou?

A. I have, some time back.

Q. And you have read the allegations therein contained that this statute has been confiscatory, as to the complainant company, from the time that it was put upon the statute books?

A. Yes, sir.

Q. And your connection with the company is included within that term?

A. Practically.

Q. That is, it is entirely within the period running 29577
back to 1906?

A. Back to 1909.

Q. Well, it is embraced within that period?

The Master: Your connection with the company has been entirely within the period that the statute has been in force?

The Witness: It has.

Q. At what time did you first conclude as president of the company that the statute was confiscatory?

29578 George B. Cortelyou, Direct.

Mr. Ransom: Objected to as immaterial.

The Master: I think it is immaterial, but I will allow Mr. Cortelyou to answer.

Mr. Ransom: Exception.

A. Oh, I would not attempt to identify any particular time at which I reached that conclusion.

Q. Have you had that in mind from the time that you became acquainted with the details of the company?

A. No, I won't say that.

Q. Would you approximate the time when you
29579 became convinced that the statute bore heavily enough upon the company to make it confiscatory?

Mr. Ransom: Objected to.

The Master: I will allow it.

A. No, I would not approximate it.

Q. Now, you don't hold any stock in the Standard Oil Company of New Jersey?

A. I do not.

Q. Can you state what discussions, if any, were held with respect to the different oil contracts that were made, concerning the wisdom of making the contracts with the Standard Oil Company of New Jersey as against other companies?

29580 Mr. Ransom: It seems to me that question is too vague. It does not fix any time or place.

The Master: I am going to allow it, I am going to permit Mr. Cortelyou to say all that he knows about the inquiries and discussions and efforts made by himself or his company, as far as he knows, to get a better price and better terms than they got from the Standard Oil Company of New Jersey. I don't care how vague the question is or how comprehensive it is, I am going to let Mr. O'Brien go to a reasonable extent in developing the point, if that is his point.

that Mr. Cortelyou and these other trustees did not make a reasonable effort to get a better price.

Mr. Ransom: Your Honor has made the question definite; counsel did not do that.

Mr. O'Brien: Oh, I might try this case like Ransom, and take up each one of these meetings and go through it, and consume a lot of time.

The Master: Have you got the point of the question?

The Witness: Yes. Every effort was made upon each occasion of the making of an oil contract to secure from whatever source we could obtain it the requisite quantity of oil, and quality, and at the lowest price. 29582

Q. Mr. Cortelyou, you depended upon the report made to you by Mr. Addicks, to the Executive Committee, did you not?

A. In a large measure, yes, sir.

Q. You made no independent investigation yourself as to the current prices of gas oil, and the prices being paid at the various times that you passed these resolutions, by other gas companies?

A. Oh, yes, I did. 29583

Q. You made some independent investigation yourself?

A. Oh, yes, I tried to keep myself informed about those matters?

Q. Were you acquainted with the price paid by the Public Service Gas Company of New Jersey?

A. At what time?

Q. During the last five years.

A. I probably was at the time.

Q. You don't recall it definitely?

A. No, I do not.

Q. Were you acquainted with the price paid by the Brooklyn Union Gas Company over a period of ten years?

A. I have heard from time to time of the price being paid by the Brooklyn company.

Q. Mr. William Rockefeller was present at these meetings where these resolutions were passed to purchase oil from the Standard Oil Company of New Jersey?

A. The minutes would have to show; I would not attempt to testify as to any given meeting.

29585 Q. What is your memory on that?

A. I would not rely on my memory to answer a question of that kind.

Q. Well, you would assume that if Mr. Addicks got up a statement here that it is correct?

A. Absolutely.

Q. As to the men who were present at the meetings?

A. Yes, sir.

Q. Now, if your memory is refreshed by this paper as to those who were present at the meetings held of the Executive Committee where resolutions were passed to enter into contracts with the Standard Oil Company of New Jersey, you would assume that would be the fact?

29586

A. Yes, sir.

Q. Now, will you state what efforts you made to have Mr. William Rockefeller secure a better price than the one presented in the report of Mr. Addicks to you, from the Standard Oil Company of New Jersey?

Mr. Ransom: Objected to. The question is altogether vague and does not relate to any specific time or to any specific contract, and as immaterial and incompetent.

The Master: Objection overruled, I will take it as of any time and any contract.

A. I left the negotiations with the Standard Oil Company almost wholly to Mr. Addicks.

Q. At the time these meetings were held and these resolutions were passed, at which Mr. William Rockefeller was present, covering the purchase of oil from the Standard Oil Company of New Jersey, you were aware of the fact at those meetings that Mr. William Rockefeller was a stockholder in the Standard Oil Company of New Jersey?

A. I was not. 29588

Q. Have you never been apprised of that fact?

A. I have never known anything about it.

Q. He never discussed the fact with you?

A. Did he ever discuss that with me?

Q. Will you say that you never had any knowledge of the fact that Mr. William Rockefeller was a dominant factor in the Standard Oil Company of New Jersey?

Mr. Ransom: I object to his cross-examining his witness.

The Master: I am going to allow a very wide latitude.

A. I knew nothing regarding that except common rumor. 29589

Q. Didn't you take it for granted that he was?

Mr. Ransom: I object to that as incompetent and immaterial.

The Master: I will allow it.

Mr. Ransom: Exception.

A. At what time?

Q. At all the times that he has been present at these meetings of the Executive Committee?

A. No.

Q. Wasn't it a matter of general knowledge that he was, and his brothers and sons, connected with that company?

Q. Oh, yes, at one time.

Q. Hasn't it been put in the public prints and in official documents, and isn't it generally assumed?

A. Up to a certain period, yes

Q. Will you say that you do not know today that he is a stockholder in that company?

The Master: Your question was, that he was a dominant factor.

29591 Mr. O'Brien: Yes, I will put that in the question.

The Witness: Is that included in the question?

Mr. O'Brien: Yes.

A. I don't know today that he is either a dominant factor or a stockholder.

Q. Have you had any knowledge coming to you as to just how closely he was connected with that company, and how far he managed its affairs?

A. No direct knowledge.

Q. I don't mean, Mr. Cortelyou, whether you went and examined the stock books, or asked him categoric-
29592 ally whether he held stock and how much. Haven't you all along assumed that he was closely connected with the management of that concern?

A. I knew, Mr. O'Brien, that in the past it was understood that he was. When that intimate relation ceased I do not know.

Q. Well, do you know that it has ceased?

A. I do not; I do not know one way or the other.

Q. Then we are not to infer from what you said that he was more active at one time than another?

A. I would infer that.

Q. You would infer it?

A. Oh, yes.

Q. From what, his age?

A. Not necessarily.

Q. From what knowledge would you draw that inference?

A. I am only speaking now from the general public information on the subject.

The Master: You have had the impression for some years that he has not been so active or so closely affiliated as in prior years?

A. That is it exactly.

The Master: That is all you mean to say?

The Witness: That is all I mean to say. 29594

Q. You felt right along that the Rockefeller family controlled that company?

Mr. Ransom: I object to that.

The Master: I will allow the question.

Mr. Ransom: What has a family got to do with a matter like this?

The Master: I will allow it.

Mr. Ransom: Exception.

A. I will have to say what I said before, that I know nothing about that beyond the general public impression.

The Master: To that effect?

The Witness: To that effect. 29595

Q. You mean that you haven't any knowledge of it except what is in the public prints?

The Master: The witness has so stated several times.

A. Substantially.

Q. Was there any time at a meeting of the committee where gas oil contracts were up, that you turned to Mr. Rockefeller, knowing that he was connected with that company, and said, "We ought to get a lower price than that"?

A. I never recall such an incident.

29506 Q. Did you make any argument with him that he ought to be able to secure for you or your company, or his company, the Consolidated Company, a lower price than the price proposed in the report given to you by Mr. Addicks?

Mr. Ransom: I object to that as immaterial. There is no obligation that this company should have a lower price than other companies.

The Master: Objection overruled. That is not the question. The question is, a lower price than that quoted or referred to in the contract

29507 recommended by Mr. Addicks.

Did you ever make that request of Mr. Rockefeller?

The Witness: I never did.

Q. May we fairly assume, Mr. Cortelyou, that when Mr. Addicks made his report to you setting forth statements as to the gas oil propositions received from the Standard Oil Company of New Jersey that you passed it on his recommendations?

A. After the fullest consideration.

Q. Well, was it discussed at length?

A. Discussed with Mr. Addicks, discussed with other officers of the company

29508 Q. Do you follow the oil market pretty carefully?

A. Quite carefully.

Q. Can you recall any effort made through Mr. Rockefeller to get a better price than the one proposed in any report made by Mr. Addicks?

A. I do not recall the details of Mr. Addicks' efforts in regard to each contract. The answer to your question would fall within those lines because, as I stated before, I relied very largely on Mr. Addicks in the attention he gave to the details of the contract.

Q. Did you ever question the propriety of Mr. William Rockefeller sitting in as a member of the Execu-

tive Committee, passing resolutions for the purchase of many millions of gallons of gas oil from a company in which he had a substantial interest?

Mr. Ransom: Objected to as immaterial and not bearing on any issue in this case.

The Master: There is no proof here that Mr. Rockefeller had any financial interest. I shall allow the question if put without that.

Did you ever question the propriety of Mr. William Rockefeller sitting in the Executive Committee when a contract for gas oil was under discussion, or up for approval? 29600

The Witness: I did not.

Q. Did you ever suggest to Mr. Addicks to go to any particular company or any companies and make a personal effort to get a different price and a better price than what was proposed in the report made to the Executive Committee?

A. We talked over many phases of the oil contracts, and on the occasions when Mr. Addicks wrote to other oil companies I was cognizant of it and approved of it.

Q. Would you say that you approved of the brief missives that he sent to these companies, and the form in which he put it? 29601

Mr. Ransom: I object to that.

Q. (Continued.) Offering them a chance, or requesting them to make quotations?

Mr. Ransom: I object to it as assuming facts that are not in the record.

The Master: Objection sustained on the ground that Mr. Cortelyou has said that he approved of the communications sent. It is repetition, and there is no necessity for characterizing the letter.

Mr. O'Brien: Exception.

Q. Did you ever tell him to go and see other companies and bring in some more quotations, make a further effort than he had made as set forth in his report, in order to get a lower price?

A. I believe at the time that he had made every effort possible to get a lower price.

Q. Will you say that when you received his report and the Executive Committee adopted it, that it was assumed that he had made sufficient effort?

A. I believed he had.

Q. Have you read the letters that are in evidence in
29603 this case, or copies of the letters addressed by Mr. Addicks on behalf of the complainant company to other companies than the Standard Oil Company of New Jersey?

A. Yes, sir.

Q. Do you recall having suggested to Mr. Addicks that other companies be solicited?

A. I knew of no other companies.

Q. You knew of no other companies?

A. I knew of no other companies.

Q. Do you mean by that that you did not know of any other companies that might furnish gas oil to the complainant company?

29604 A. Yes.

Q. Than those that were mentioned?

A. That had anything like the facilities or could meet our requirements.

Q. Did the Executive Committee formally determine the policy of buying all of the gas oil of the complainant company and affiliated companies?

A. I do not recall any question of policy, nothing of the kind during my time.

Q. Did you at any time authorize Mr. Addicks to set forth as a basis for his contract, the purchase of

29605

oil for the affiliated companies as well as the complainant company?

A. I do not recall particularly as to that. My impression has been that it was a matter of convenience and also a matter of economy.

Q. Then as your memory brings it to you that was not a formal discussion and determination made at any time upon that method as a policy to be pursued by Mr. Addicks in the seeking of quotations on gas oil?

A. I do not recall that.

29606

Q. It was not always done, was it?

A. I don't know how it was done before I came over.

Q. Do you know why you did not purchase the gas oil for the New York Mutual Company?

A. Yes.

Q. Did you personally, Mr. Cortelyou, ever go into the question of having your own oil storage for the complainant company and affiliated companies?

A. We considered the question of oil storage a number of times.

Q. That has been found feasible by other gas companies?

A. Small companies

29607

Q Would you call the Cities Service Company a small company?

Mr. Ransom: I object to the question. The Cities Service Company does not present any analogy to this company. It owns a lot of little plants all over the country.

The Master: I will allow the question.

Mr. Ransom: Exception.

The Master: Do you consider the Cities Service Company a small company?

The Witness: The Cities Service Company is a holding company made up of many small companies, and is also an oil company.

Q. And they supply their own oil?

A. I think so. I do not know that for a fact.

Q. You have heard that that is a fact?

A. Yes.

Q You have—

The Master: They are in the oil business, aren't they?

The Witness: Yes, they developed into a very large oil company.

Q. And they have a number of gas companies?

A. I understand so, scattered all over the country.

29609 Q. And would you say that they are run efficiently, from what you know?

Mr. Ransom: I object to it as immaterial, not bearing on this case.

The Witness: I would not undertake to say.

The Master: Mr. Cortelyou says he would not undertake to say. I will allow the answer to stand.

Q. Can you refer to any personal investigation you made, Mr. Cortelyou, into the question of the best price of gas oil from time to time?

A. To the extent of talking with gentlemen who came into my office, men connected with other gas

29610 companies, such information as I could get by inquiry and by a study of the trade papers, the daily papers

Q. Did you ever make any particular investigation into the supplies of gas oil that could be had at a lower price than that charged by the Standard Oil of New Jersey for the affiliated companies which purchased their own supplies?

A. That was regarded as impractical, entirely unwise on our part, serving this great City.

Q. Wouldn't it be—was the purchase of the oil in large quantities, that is embracing the affiliated companies, was that determined upon to get a lower price by reason of the large quantities contracted for?

A. At times I should say yes. I should hardly think that would obtain now.

Q. Do you recall at any time making an investigation into the advisability of having your own oil storage in and around New York?

The Master: He has answered that. He said it had been under discussion and under consideration.

Q. Well, do you recall the details into which you went in connection with that subject?

A. No, I will not undertake to say that I recall the details. I know that the engineers made certain calculations and investigations regarding that, and I know that Mr. Addicks had discussed it with me a number of times, and particularly since an investigation by the Public Service Commission into the matter of gas supplies and oil storage and so forth. 29612

Q. We may then assume that as to these matters, the storage of gas oil, the purchase of gas oil, that you and the members of your committees, Executive Committee, depend almost entirely upon the judgment of the engineers of the company like Mr. Addicks and Mr. Morris and the others?

A. About any technical matters, any strictly engineering matters, we would be guided very largely by their judgment. 29613

Q. And that may be said of the wisdom of the oil contracts, that you have that much confidence in Mr. Addicks that when he turned in his report to your meetings advising that the contract be made with the Standard Oil Company of New Jersey, you felt that that was a well worked out judgment, and you coincided with him?

A. Yes, sir.

Q. You do not recall any case where you held a matter in abeyance until you made a personal investigation yourself?

A. Oh, the matter was held in abeyance on a number of occasions.

Q. Can you recall any in particular?

A. No, I do not recall any particular occasion, but I remember that we held open the final negotiations in an effort to get every possible bit of information we could upon the subject.

Q. Can you fix that particular contract or year?

A. No, I would not undertake to do that. I am simply giving you the strong impression I have. I have had innumerable conferences with Mr. Addicks
29615 and with the other officers on the subject of oil; every important contract we have, they take up with me.

Q. Don't you know, Mr. Cortelyou, that the prevailing impression with the other oil companies furnishing oil to gas companies in and around New York is that it would be futile for them to undertake to do business with you, that the Standard Oil Company of New Jersey would get the contract anyway?

Mr. Ransom: I object to the question.

The Master: I will let Mr. Cortelyou say whether he understands that to be the fact.

The Witness: I do not.

Q. How closely did you go into Mr. Addick's let-
29616 ters?

The Master: Is that assumption justified, if there is any such assumption?

The Witness: I think not, from anything I know.

Q. Will you state why you preferred the Standard Oil Co. of New Jersey to the Standard Oil Company of New York?

Mr. Ransom: I object to that. There isn't any evidence that they have preferred the Standard Oil Co. of New Jersey to the Standard Oil Company of New York.

The Master: I shall allow the question on the theory that it is "why did you make the contracts with the Standard Oil Company of New Jersey rather than the Standard Oil Company of New York."

The Witness: It was not a case of preference, as I recall it. It was that one could furnish us with the oil, and the other could not or would not.

Q. Oh, you are referring back to Mr. Higgins' tender missive in answer to Mr. Addicks' note on that subject? 29618

Mr. Ransom: Objection.

The Master: I will sustain the objection because of the characterization of the missive. I will see if I cannot stop that.

Mr. O'Brien: Will your Honor permit the question if I strike out the word "tender"?

The Master: Ask another question and see if I will permit it.

Q. Well, do you recall that letter that Mr. Higgins wrote in answer to Mr. Addicks' brief note to him?

Mr. Ransom: Objected to.

The Master: I sustain that objection on the ground that you characterize the note Mr. Addicks sent to Mr. Higgins. 29619

Q. Do you recall the correspondence, Mr. Cortelyou, between Mr. Addicks and Mr. Higgins?

A. I have some recollection of it, yes.

Q. It is your belief that the correspondence carried on by Mr. Addicks with the several oil companies which is set forth in the record in this case shows an earnest effort to get the best price of gas oil at the times referred to?

A. I do.

Q. You feel that the utmost was done?

A. I do.

29620 George B. Cortelyou, Direct.

Q. In connection with each one of those transactions by the sending of the letters which he sent to these companies?

A. I feel that every effort was made to get the best possible terms.

Q. Do you think that those letters, or the sending of letters of that kind and character, displayed an earnest effort to negotiate the best price for gas oil from the companies mentioned?

A. I have already testified that I approved those.

Q. I am asking you now if you believe that they

29621 do?

A. I would not have approved them if I did not believe so.

Q. You mean that you would not have approved of them if you did not think that those letters represented the best effort to get prices that could be made?

A. As a proper link in the chain of effort to secure the best possible terms.

Q. You have read the testimony of Mr. Addicks in this case, haven't you?

A. I have.

Q. And you are acquainted with what he said as to his effort in connection with this matter?

29622 A. Yes, sir.

Q. And it is your conclusion as president of this company, that in that regard he showed that he had made an earnest and a best effort to get the lowest price of gas oil obtainable for the company?

A. The record in my judgment showed that he had made every effort possible to secure the best terms for the company.

The Master: I thought at one time that I might have some question about it, but you are taking it away from me now.

Mr. O'Brien: Are you prepared to make a finding now?

The Master: I do not see how I can escape it or escape the proof that you are putting in, putting the witness on the stand and having him swear under oath that in his judgment and opinion it was an honest effort. How am I going to escape that honest belief?

Q. Mr. Cortelyou, how far have you gone into the question of disposal of residuals?

A. During my term of office here.

Q. How far have you gone into that matter? Is 29624
that a matter that is disposed of at these Tuesday meetings of the committee?

A. The matters relating to contracts concerning residuals come before the executive committee.

Q. Do you depend upon the judgment of Mr. Gawtry in that matter?

A. The combined judgment of a number of the officers.

Q. Who would you include in that?

A. The engineers.

Q. Mr. Carter?

A. Oh, yes.

Q. Mr. Woods? 29625

A. Mr. Woods, Chief Engineer Bradley, Mr. Morris.

Q. You do not depend upon his judgment now, do you?

A. I do.

Q. I thought Mr. Bradley was quite superannuated?

A. I would not call him superannuated. He is getting to be a very old man.

Q. Still clear minded?

A. I think so. He has the ailments of age.

Q. Well, now, do you know whether any of the officers or trustees of the complainant company are members of or stockholders in the Barrett Company?

A. I know nothing whatever about it.

Q. You have never asked them?

A. I do not recall ever asking them such a question.

Q. Have you ever done anything to find out whether the officers or trustees of the Consolidated Gas Company held stock in the Barrett Company?

A. No, I have not.

29627 Q. Or in any of the coal companies with which you do business?

A. No, sir.

Q. You were not with the company when they began to make coal gas, or at least water gas, at Astoria?

A. I was not here when they moved to Astoria.

Q. Were you with the company in 1908?

A. I was not.

Q. When they changed their policy at Astoria?

A. I was not here in 1908.

Mr. Ransom: I object to that question. It assumes a state of facts not proven. There isn't any change of policy.

29628 The Master: I will allow it. The mere fact that Mr. O'Brien incorporates something into a question does not prove anything.

Mr. O'Brien: I refer to the testimony of Mr. Woods, your Honor.

The Master: I know what you refer to. The trouble with it is you are assuming Mr. Woods said they changed their policy, and Mr. Woods said they did not change their policy. At any rate, you and he had quite an argument as to whether it was or was not a change of policy, and it gets us nowhere by putting into your ques-

tions that there was a change of policy. What is the next question?

Q. At the meetings of the executive committee, they are held every week, held on Tuesdays of every week?

A. Yes, sir.

Q. At eleven o'clock or one o'clock?

A. Held early in the afternoon.

Q. And you get through a grist of business in an hour or two as to the Executive Committee?

A. Oh, yes, we get through whatever business there is to transact.

Q. Reports coming in from the heads of depart- 29630
ments and branches of the works?

A. Yes.

Q. And boiled down for you to quickly pass upon it?

A. Yes, sir.

Q. Now, do you ever visit the plants?

A. Oh, yes.

Q. Of all the companies?

A. All the companies.

Q. The electric light companies as well as the gas?

A. Yes.

Q. Would you say how frequently?

A. No, I would not undertake to say that. 29631

Q. Well, you don't find occasion to go there very often?

A. I would not think of it as often. I go there unexpectedly, whenever I happen to have the time to go to an individual plant; sometimes make an entire tour of inspection.

Q. Well, would you say once a year or twice a year?

A. I would not undertake to say how often. Sometimes several times in a year, to an individual plant.

29632 George B. Cortelyou, Direct.

Q. And you are acquainted with the operations of the Central Union?

A. I am.

Q. Northern Union?

A. Yes.

Q. New York & Queens?

A. Yes.

Q. The Standard?

A. Yes.

Q. The New Amsterdam?

A. Yes.

29633 Q. And the Mutual and the United Electric Light & Power?

A. Yes, sir.

Q. And you survey their plants from time to time?

A. Yes, sir.

Q. Investigate them?

A. Yes.

Q. You attend at the meetings of the board of directorates of those companies?

A. Yes, sir.

The Master: What do you want to get out, Mr. O'Brien? Get down to the point. You have got some point in your mind. Now, let us get to

29634 it.

Mr. O'Brien: I want to find out what Mr. Cortelyou does in the shape of administrative work in connection with the various companies, expressed, of course, in general terms.

The Master: As bearing upon the salaries the company pays him?

Mr. O'Brien: It has partly to do with that, yes.

Q. You visit the plants of the affiliated company as often as those of the Consolidated Company itself?

A. I would not say so, no, sir.

Q. Do you go to Astoria very often?

A. I would not say very often.

Q. The fiscal matters of all these companies you have to do with, of course?

A. They come before me.

Q. And you define the policy, or at least participate in the discussions and conferences that have to do with the work of the business of these companies?

A. The policies are defined by the board of trustees to the Executive Committee.

Q. Well, you have to do with the fiscal matters of these various companies? 29636

A. I do as an administrative officer, as a member of the Executive Committee of the Consolidated Company.

Q. And they get some of your time?

A. The affiiliated companies?

Q. Yes.

A. Yes, sir.

Q. Well, now, could you give us your opinion as to what might be considered a fair division of your responsibilities and your energies and your time between the complainant company and the affiliated companies?

A. I would not undertake to strike a line and say 29637
this portion to the affiliated and the balance to the Consolidated.

Q. Would you approximate it in general terms?

A. No, I would not undertake to approximate it,

Q. Would you say that one-half or three-quarters of your time is devoted to these other companies and their business and their concerns?

A. I would not undertake to define it.

Q. Not even approximately? If you were allocating your salary to the different companies, haven't you in mind any division that would be a fair one to

all of the companies concerned, a fair division of the expense?

A. I do not think that there would be any occasion for such allocation of the compensation paid the president of the Consolidated Gas Company.

Q. Is there any reason back of that?

A. Yes, a very decided reason. The Consolidated Gas Company is vitally interested in the welfare of these affiliated companies. In many cases it owns the entire stock of the companies. In many other respects it is concerned with the affairs and the welfare of
29639 these companies, and the president of the Consolidated Company is serving his own company best to the extent to which he can give his time to their affairs.

Q. You understand, Mr. Cortelyou, that what we have termed in the accountancy exhibit "Non-operating revenue," "Non-gas operating revenue," has been excluded from the revenues of the complainant company in this case?

A. Yes.

Q. Well, now, isn't it fair, in your opinion, in this particular matter, where we are speaking about the expenses of the gas making industry, to assign only to the gas making industry of the complainant a por-
29640 tion of your salary that might represent fairly the amount of time and energy and zeal devoted to the complainant company's gas making business?

Mr. Ransom: I object to that question. It is not a question for this witness to decide.

The Master: Why do you object? If Mr. Cortelyou wants to decide that, let him decide it. Overruled.

Mr. Ransom: Exception.

The Master: Do you think it is fair that your salary should be chargeable against the Consolidated Gas business?

The Witness: I do.

The Master: You have got an answer.

Q. And not any of it charged up against the other companies?

A. I am perfectly willing to say that there might be a slight allocation.

Q. Well, don't the other companies get the benefit of your administrative ability?

A. I hope they do.

Q. You are the head of them substantially, practically?

A. I am first of all the president of the Consolidated 29642
Gas Company.

Q. Then you mean to say, Mr. Cortelyou, that so far as the expense of running the gas business is concerned, that no part of your salary should be charged up to the gas making expense of any of the affiliated companies, but should all be charged up against the gas making branch of the complainant company's business?

A. I do.

Q. That no part, then, of your salary should be charged up to that part of the complainant's business, the Consolidated Gas Company's business, that has to do with its investments of moneys in various concerns, 29643
its supervision of the running of the affiliated companies, and all the money matters concerned with those subjects?

A. I do.

Q. Then you have in mind, Mr. Cortelyou, formulating your judgment on this, that it is all one company, one system, interrelated, dependent upon one another, and that they get the benefit, if they do not get it in the charge or allocation of part of your salary, they get the benefit substantially from being connected with the parent company or the holding company?

Mr. Ransom: I object to the question as argumentative in form, and incompetent; an effort to further cross-examine the witness on this matter. The question is purely argumentative.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Cortelyou, your idea, then, is that the affiliated companies should have your services free?

Mr. Ransom: Objected to. There is no such testimony in the case.

The Master: Objection sustained.

29645 Q. That no part of the expense of your salary should be entered upon the books of any of the affiliated companies?

Mr. Ransom: Objected to as already fully covered.

The Master: Objection sustained.

Mr. O'Brien: Exception in both instances. Would your Honor mind stating on what you base your ruling?

The Master: Mr. Ransom made the statement which I sustained.

Mr. Chambers: Cross-examination?

The Master: Why, no, already covered—

29646 working around in a circle again.

Mr. O'Brien: Oh, no, your Honor.

The Master: I say you have, now. Next question. What is the use of arguing with me?

Mr. O'Brien: There is not much use in arguing with you, that is—

The Master: That is sure, yes. Go ahead.

Q. Do you consider each one of these companies, these affiliated companies, as part of the consolidated system?

Mr. Ransom: Objected to as incompetent in form, and vague.

The Master: Objection sustained. You have already covered that.

Mr. O'Brien: Exception.

Q. You look upon the Astoria Company as one of the complainant's plants, do you?

Mr. Ransom: Objected to.

The Master: Sustained, already covered.

Mr. O'Brien: Exception.

The Master: When I said I would give you wide latitude I did not say you could go over the same ground two or three times.

Q. Is it not a fact, Mr. Cortelyou, take the New 29648
Amsterdam Gas Company, that it gets the benefit of your work directly?

Mr. Ransom: Objected to as fully covered.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. You spend time in its business?

Mr. Ransom: Objected to.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Is there any charge made in the books of any of these affiliated companies for the time that you spend upon their business?

Mr. Ransom: Objected to as incompetent, and 29649
also fully covered.

The Master: No, I will allow that.

Mr. Chambers: You are still in the Master's thunder on that covered business. That has not been covered. I object to counsel—

The Master: I do not need your help, Mr. Chambers.

Mr. Chambers: I object to counsel plagerizing on the Master's grounds for ruling out a question.

The Master: Do the affiliated companies make any charge for the time you spend?

The Witness: I know of none.

The Master: I know of none says Mr. Cortelyou.

Q. Does the Astoria Company charge up upon its books any amount for the time that you spend and the energies you devote to the business of that company?

Mr. Ransom: Objected to.

The Master: Overruled. What is your answer?

29651 A. The same answer.

Q. It does not? You say it does not make any such charge?

A. I know of none. It does not.

Q. How much time, Mr. Cortelyou, do you devote to the business of the New York Edison Company?

A. I would not undertake to say.

Q. Do you sit in at all at their board meetings?

A. I do.

Q. Are you a member of the Executive Committee of that company?

A. Yes, sir.

Q. And that Executive Committee performs prac-
29652 tically the same functions as the Executive Committee of the Consolidated Company?

A. Not in degree.

The Master: The same character?

The Witness: The same character. It is an Executive Committee of a great corporation.

Q. What is that, Mr. Cortelyou?

A. It is the Executive Committee of a large corporation.

Q. Would you say that the business done in quantity and in time that it requires would compare pro-

portionately with the capitalization of these companies?

A. I do not know quite what you mean.

Q. What relation does the business transacted—I am talking now about the time and the energies you devote to the Edison Company, what proportion does that bear to the time devoted to the business of the complainant gas company?

Mr. Ransom: I object to the question as already fully covered.

The Master: I will allow it.

A. I would have difficulty in answering that, be- 29654
cause, as I carry it in my mind, I devote all my time to the Consolidated Gas Company. I would not have very much left.

Q. I see then, Mr. Cortelyou, in the answers you have made in the last fifteen or twenty minutes, in connection with the time you spend on your work, you have not separated in your mind, when I have asked you about the Consolidated Gas Company, the gas making business of the complainant company from all the other business?

A. I mean that my duties as president of the Consolidated Company draw such a preponderating or take such a preponderating amount of my time that 29655
I have not considered a comparison as between companies or meetings or anything of that sort.

Q. Is it your idea that the whole business is so interwoven that it is one business and one system, and you are devoting your time to it?

Mr. Ransom: Objected to.

A. No, I have not thought of it on that basis.

Q. In answering the questions I put to you this morning, have you had in mind, when I mentioned the complainant company in its gas making business, only

the business that has to do with the making and selling of gas?

A. Quite largely.

Q. You would not say that practically all of your time is devoted to the business of the complainant in making the gas at 99th Street and 21st Street, the purchasing of the coal and oil and the supplies, and the running of those two plants, would you?

Mr. Ransom: I object to the question and to this haranguing and arguing with and cross-examining the witness. This is only a part of the
29657 gas business of the company that is referred to in this question. It has been gone into at great length.

The Master: I will sustain the objection.

Mr. O'Brien: Exception.

Q. Mr. Cortelyou, you are aware of the fact that in the accountancy exhibits in this case they have separated the operating and non-operating revenue from the gas business?

A. Yes, sir.

The Master: That is the second time you have that. I am calling your attention to the way you duplicate the work. There is no necessity for
29658 that question.

Mr. O'Brien: I am trying to find out how much of the witness's time is spent in and how much is to be charged up to just the gas making of the complainant company, not what it gets from affiliated companies not that part of the gas business, but what might be considered the expenses simply of the making of gas in 99th Street and 21st Street.

The Master: You can do it in ten minutes. I think you have done it as far as I am going to let you do it. I think you have exhaustively covered it. I have a perfect picture of Mr. Cortelyou as

 29659

the president of the Consolidated Gas Company and as such a director of all these other companies, consulted by the officials of the other companies and having in mind their interests, from time to time attending directors' meetings, conferring with other directors of other companies, giving more or less time to these problems as they come along, and the statement that he cannot separate his time, that in his judgment all of them relate to the gas business of the Consolidated Gas Company or substantially so, that the part of it that relates to the electric light business 29660
is infinitesimal, so small that he does not carry it in his mind at all.

Mr. O'Brien: He did not say that.

The Master: Have I correctly stated your testimony in substance, Mr. Cortelyou?

The Witness: Yes, sir.

Q. Do you concur in the Master's statement that your time spent on the business of the New York Edison Company is infinitesimal?

A. No, I would not personally have expressed it that way, but that is substantially correct.

Q. Are you just filling a perfunctory part there?

A. I am not filling a perfunctory part on any of it. 29661

The Master: I will not allow any more questions on that. He is not filling a perfunctory part, but in the great amount of time Mr. Cortelyou spends in his work the substance of his testimony is that a comparatively small, negligible part was devoted to the electric light company, in his judgment. Let us get to something else.

Mr. O'Brien: I note an exception to your Honor's setting up—

The Master: I have still to find something in this case that you do not take exception to.

Mr. O'Brien: To your picture of the testimony of the witness.

The Master: I have permitted you to spend all the time I am going to let you spend on this branch of the examination.

Mr. O'Brien: Exception.

Q. Does the complainant company hold any interest in coal companies of any kind, to your knowledge?

A. Not to my knowledge.

By the Master:

Q. You would know, would you not, Mr. Cortel-

29663 you?

A. Why, certainly.

Q. It does not, does it?

A. No, I am merely answering the question in form. It does not.

By Mr. O'Brien:

Q. Have they ever gone into the question of buying their own coal mines?

A. Yes, sir.

Q. When?

A. I do not recall the particular date, but a number of times we have discussed that.

Q. Just talked it over?

29664 A. Discussed it fully. Every once in a while we have a proposition made to us to buy coal mines.

The Master: Do you mean somebody comes along with a proposition to sell you a mine?

The Witness: Yes, sir.

Q. What is your salary, Mr. Cortelyou?

Mr. Ransom: Objected to as incompetent, immaterial; and also the further objection that under your Honor's direction they have had full access to these payrolls.

The Master: I will allow it.

Mr. Ransom: In the examination of Mr. Cortelyou it is not a proper question. If this were a witness who had been called by the complainant, on cross-examination your Honor has sometimes ruled that the question was proper, but to elicit this from a witness called by the defendant I think is improper.

The Master: I will allow it.

Mr. Ransom: Exception.

A. $40,000.

The Master: Per annum?

The Witness: Per annum. 29666

Q. Is that all paid by the Consolidated Company?

A. It is.

Q. You received no other salaries from any of the affiliated companies?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

Mr. Ransom: Exception.

A. No, sir.

Q. You have as a member of the Executive Committee fixed the salaries of the other officers?

A. No, I have not.

Q. I mean has the Committee done that?

A. The Executive Committee does. 29667

Q. Ever taken up or discussed the feasibility of reducing any of these salaries during the last two or three or four years?

Mr. O'Brien: I hope this is not anathema.

The Master: No, it is a joke.

By the Master:

Q. Have you, Mr. Cortelyou, taken up the question of reducing salaries, in the last three or four years?

A. Never.

Q. Particularly this year or last year?

A. Never.

29668 George B. Cortelyou, Direct.

By Mr. O'Brien:

Q. Will you state, Mr. Cortelyou, when the Executive Committee decided to institute this rate case?

A. I would have to consult the records.

The Master: Did you decide to do it before the suit was instituted?

The Witness: Decided at about that time.

The Master: Such a waste of time, Mr. O'Brien is perfectly silly. It is a perfect waste of time. When you look at me that way I have to make some such expression.

29669 Mr. O'Brien: Your Honor has made a lot of expressions on this record.

The Master: I will make more probably before the case is closed.

Q. Can you say how long ago, Mr. Cortelyou, it was determined by the officers of this company to institute a rate case and assail this statute?

The Master: I will sustain an objection if I hear it, on the ground that the witness has already answered it was about the time they instituted this suit.

Mr. Ransom: Objected to.

Mr. O'Brien: That was your answer, your

29670 Honor.

The Witness: That was mine.

Q. You adopted the statement of the Master as yours?

A. I did not. I made that statement myself.

Q. The matter was discussed at length, I assume, Mr. Cortelyou, before it was done in the Executive Committee, and the members of the Executive Committee were aware of that fact—I mean the step that was taken in assailing the statute, that was a matter that was taken up in due form in the Executive Committee, was it?

A. Yes, sir.

Q. And the wisdom of it was determined upon by the whole Committee?

A. By the Committee and the Board.

Q. And the members of the Board are interested in other gas companies besides the affiliated companies, you know that?

A. I believe so; yes, sir.

Q. And you were aware of the attack made by the Kings County Lighting Company upon the 80-cent statute?

Mr. Ransom: Objected to as immaterial and nothing to do with this case, not one of the affiliated companies. 29672

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. You were aware at the time that you took this step of the action instituted by the Municipal Gas Company of Albany?

Mr. Ransom: Objected to as immaterial.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. And the Brooklyn Borough Gas Company of Brooklyn?

Mr. Ransom: Objected to as immaterial, nothing to do with this case. 29673

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Mr. Cortelyou, can you tell us whether in the Executive Committee meetings of the New York Edison Company there was any policy ever determined upon as to how far that company should promote the electric light business in the territory in which the complainant and its affiliated gas companies were operating?

Mr. Ransom: Objected to as immaterial, no bearing on this case.

The Master: Sustained.

Mr. O'Brien: Exception. This concerns a question I have raised before, your Honor.

The Master: I understand the question.

Mr. O'Brien: If you will permit me to make my record on it.

The Master: I think you have made it by this one question.

Mr. O'Brien: I assume your ruling would be the same as you made before.

The Master: I think you have made it by this
29675 one question and other questions which I have ruled out.

Q. Have you ever made a comparative study, Mr. Cortelyou, of the promotion expenses of the two companies, the Consolidated Gas Company in its gas business and the New York Edison Company?

Mr. Ransom: Objected to, not within any issue here.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. What steps, if any, have been taken by the Executive Committee of the Consolidated Gas Company to regulate the business of the New York Edison
29676 Company, which was making inroads upon the gas business?

Mr. Ransom: Objected to as incompetent, immaterial and irrelevant.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Has there been at any time in the Executive Committee or either corporation a plan formulated as to just how far one business would be promoted so it would not interfere with the other?

Mr. Ransom: Same objection as previously indicated.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Have you read the testimony of Mr. Carter here concerning the falling off of the gas business and the necessity of intensive work to keep it alive?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Have you read the testimony of Mr. Carter given in this case, Mr. Cortelyou?

The Master: Same ruling.

Mr. O'Brien: Exception. 29678

Q. Do you know how much of the earnings in the gas business of the complainant company were turned into the New York Edison Company?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

The Master: You have already had several rulings on that point.

Q. Will you state how much was paid by the complainant company for the purchase of the New York Edison Company?

Mr. Ransom: Same objection.

The Master: Same ruling. 29679

Mr. O'Brien: Exception.

Q. Will you state why the choicest show space and the choicest floors in the office building at 15th Street were given over to the New York Edison Company?

Mr. Ransom: Objected to on the previous grounds.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. At any time has the Executive Committee made an analysis of the promotion and kindred expenses of the New York Edison Company and the gas industry

of the complainant company, to determine just how these businesses might be wisely promoted without interfering with each other?

Mr. Ransom: Objected to on the same grounds previously stated.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Mr. Cortelyou, the New York Edison Company have produced large revenues?

Mr. Ransom: Objected to as incompetent and immaterial.

29681 Q. In 1918, 1917, 1916 and back as far as your connection with the company?

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Will you state what those revenues are?

Mr. Ransom: Same objection as before.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What are the revenues of the New York Edison Company for the current year, if you know?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception. That will be all.

29682 Mr. Ransom: No cross-examination.

Recess.

Afternoon session.

WILLIAM G. ROCKEFELLER, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. What is your full name?

A. William G. Rockefeller.

Q. You are a son of William Rockefeller?

A. Yes, sir.

Q. One of the trustees of the complainant company? 29684

A. I believe he is.

The Master: Your father?

The Witness: My father.

Mr. Ransom: That is, the father is a trustee?

The Master: Yes.

Q. He is the owner of stock in the Standard Oil Company of New Jersey?

Mr. Ransom: I object to that as incompetent and immaterial.

The Master: I will take that.

Mr. Ransom: How can it be proved by this witness?

The Master: I don't know.

29685

Mr. Ransom: This witness is not in any way connected with the Consolidated Gas Company.

The Master: But he may know whether his father owns stock in both companies.

Mr. Ransom: It is not a competent method of proving a fact. As against this complainant the statement of this witness is not competent.

The Master: Oh, yes, I will take Mr. Rockefeller's statement if he knows that his father is a stockholder in the Standard Oil Company of New Jersey.

Mr. Ransom: Exception.

A. I believe he is.

Q. And has been for a number of years?

A. I believe so.

Q. At least thirteen years?

A. I think so.

Q. Do you own any stock in that company yourself, Mr. Rockefeller?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained. I am not interested in William G. Rockefeller, he is not a

29687 trustee.

Q. Do you hold any stock in the Standard Oil Company of New Jersey for your father?

Mr. Ransom: I object to that as incompetent and immaterial.

The Master: Objection sustained. He says his father owns stock in the Standard Oil Company of New Jersey. It doesn't make any difference whether he has it in his father's name or in his name or in both names.

Mr. O'Brien: I ask him whether he holds any on behalf of his father.

The Master: I am not interested in that.

29688 Q. Do you know what his holdings have been, Mr. Rockefeller?

Mr. Ransom: I object to that as incompetent and immaterial and not binding on the complainant.

The Master: Objection sustained on the ground that it is immaterial what his holdings are.

Mr. O'Brien: What William Rockefeller's holdings are is immaterial?

The Master: Yes, once you have developed the fact that he is a stockholder in both com-

panies I don't care how much stock he has; he has an interest.

Q. Is your father in the City at the present time?

A. He is not.

Q. He is south, is he?

A. He is.

Q. At what place?

A. Jekyl Island.

Q. That is in the State of Georgia?

A. Yes, sir.

Q. How long has he been away?

A. About ten days. 29690

Q. He left the City about ten days ago?

A. A week ago last Saturday.

Q. Do you know when he is coming back?

A. I haven't any idea.

Q. Has he written you since he went there?

A. No.

Q. Do you think he will be back next week?

Mr. Ransom: I object to that as immaterial and incompetent.

The Master: I will allow it.

A. I don't think he will be back until late in the spring.

Q. Do you think he will remain at Jekyl Island up to that time? 29691

Mr. Ransom: Objected to.

The Master: Objection overruled.

Mr. Ransom: What is the need of going into the personal relations of this father and son?

The Master: I am going to allow Mr. O'Brien to ask Mr. Rockefeller where his father is and when he thinks he will be back.

A. I think he will remain at Jekyl Island or some other place in the south until the warm spring weather comes here.

The Master: That is his annual practice, is it?

The Witness: He has been going south for a number of years to escape the winter weather.

Q. Do you keep in touch with him when he is in the City?

A. I have been away from New York most of the time for the last five years, so I am not intimately in touch with his business affairs.

Q. You don't know then how closely he has followed the proceedings in this case?

29693 A. Not at all.

Q. You cannot say whether or not he has a copy of the minutes of the trial?

A. No.

Mr. Ransom: I object to that as immaterial.

The Master: The witness has said no.

Q. Do you know whether he knew that there was a trial going on that involved the Consolidated Gas Company?

Mr. Ransom: I object to that as immaterial.

The Master: Objection overruled.

A. I do not.

Q. Are you acquainted with the affairs of the Standard Oil Company of New Jersey?

29694

A. Not at the present time, or for some years past.

Q. You don't hold any office with that company?

A. No.

Q. Are you employed in any capacity, or do you fill any functions in the management of that company?

Mr. Ransom: Objected to as immaterial and as having no bearing on any issue in this case.

The Master: I will allow it. It may be material. If Mr. Rockefeller is an officer of that

company he may be able to tell us something about the price of oil.

A. I have no connection with the company.

Q. Have you had at any time during the past thirteen years?

Mr. Ransom: I object to that on the same grounds as previously stated.

The Master: Objection overruled.

A. I was an assistant treasurer for some years previous to the dissolution of the company, which I think occurred in December, 1911. Since that time I have had no connection with the company. 29696

Q. Do you fill any position or office in connection with the Standard Oil Company of New York?

Mr. Ransom: Objected to as immaterial and not within any issues in this case.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Not since the same time of dissolution.

Q. Mr. Rockefeller, are you connected with any oil companies?

A. No.

Q. I mean, do you hold stock in or share in the management of any oil company?

The Master: You had better split that question, because I will not let him say whether he owns any stock in any oil company. I will let him say whether he is actively engaged in the management of oil companies, on the theory that if he is he may be able to tell us something about the price of oil. 29697

Mr. Ransom: If counsel for the District Attorney will state that that is his purpose.

The Master: I will assume that is the purpose. I will ask him myself.

Q. Are you actively engaged in the management of any oil company?

29698 Samuel Sloan, Direct.

The Witness: No.

The Master: Have you been in the last five or six years?

The Witness: No.

Q. Where does your father reside when he is home?

A. New York City.

Q. Is it in the suburbs or in the City?

A. 689 Fifth Avenue is his residence.

Mr. O'Brien: That is all.

Mr. Ransom: No questions.

29699

SAMUEL SLOAN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Sloan, you are one of the trustees of the complainant company?

A. I am.

Q. And you have been since what time?

A. I think it was about 1907 or 1908; I don't know just which.

Q. You participate in the business of the company?

29700

A. At its meetings.

Q. At the directors' meetings?

A. Yes, sir.

The Master: Are you a member of the Executive Committee, Mr. Sloan?

The Witness: I am not.

The Master: When you say directors' meetings, I understand they are called trustees in this company?

The Witness: That is right.

Q. Of what other companies are you a director?

29701

Mr. Ransom: I object to the question as broad as asked.

The Master: Yes, I don't think we are interested in that. If you want to ask Mr. Sloan what oil companies or coal companies he is a director in, or any other companies that you say you will attach the relations of which this company, I will allow it in general.

Q. Will you take the Master's question, Mr. Sloan, and answer that?

The Master: What oil companies or coal companies are you a director of?

29702

The Witness: I don't think I am a director in any of those.

Q. Do you own stock in any oil company?

Mr. Ransom: Objected to as immaterial and incompetent unless it is a company that has some dealings with the complainant company or companies that are on this transfer system of gas in the City of New York.

The Master: Yes, I will limit it to that.

Q. Do you own any stock in the Standard Oil Company of New Jersey?

The Witness: I do.

Q. How much?

29703

The Master: I will not allow that.

Q. How many shares?

Mr. Ransom: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection sustained.

Mr. O'Brien: Your Honor, if it was simply a share, you might say it was a nominal connection.

The Master: No, I will assume that Mr. Sloan owns more than one share, that he owns enough stock in the Standard Oil Company to be inter-

29704 Samuel Sloan, Direct.

ested in the success of that company. I will ask him that.

Q. Do you own enough stock in the Standard Oil Company to be interested in the success of that company?

The Witness: Yes.

The Master: Do you own any stock in any of the coal companies that supply coal to the Consolidated Gas Company?

The Witness: I don't know what coal companies supply all the coal there.

29705 The Master: Do you own any stock in any of the coal companies?

Mr. O'Brien: I will refresh your memory.

The Witness: I own stock, small holdings, in the Lehigh Valley Coal Company, and the Delaware, Lackawanna & Western Coal Company.

Q. What railroads that handle coal are you a stockholder of, Mr. Sloan?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow it.

Mr. Ransom: What bearing has this upon the issues in this case?

The Master: I will allow it.

29706 Mr. Ransom: Exception.

A. I am a stockholder in the Delaware, Lackawanna & Western.

Q. Any others?

A. I don't think so.

Q. Do you own any stock in the Westmoreland Coal Company?

A. I do not.

Q. Berwind White Coal Mining Company?

A. I do not.

Q. Consolidation Coal Company?

A. I do not.

Q. Lehigh & Wilkesbarre Coal Company?
A. I do not.
Q. Williams & Peters?
A. I do not.
Q. Jamison Coal & Coke Company?
A. I do not.
Q. Meeker & Company?
A. I do not.
Q. Delaware, Lackawanna & Western Coal Company?
A. I do.
Q. Will you state how many shares you have in that company? 29708

Mr. Ransom: I object to that.

The Master: Objection sustained. I shall assume that wherever Mr. Sloan states that he has stock in a company, that he has sufficient stock to be interested in the success of that company, to wish for its success, so that he can get dividends and make money out of his stock.

Q. Philadelphia & Reading Coal & Iron Company?
A. I do not.
Q. Lehigh Valley Coal Sales Company?
A. I do, sir.

Mr. O'Brien: I will repeat the same question, and your Honor will rule the same way, as to the number of shares? 29709

The Master: Yes, same ruling.

Mr. O'Brien: Exception.

Q. Penn. Gas Coal Company?
A. I do not.
Q. Pittsburgh Coal Company?
A. I do not.
Q. Highe & Rafetto?
A. I do not.
Q. New Central Coal Company?
A. I do not.

Q. Pittsburgh Terminal Railroad & Coal Company?

A. I do not.

Q. Blair-Parke Coal & Coke Company?

A. I do not.

Q. Ernest Law & Company?

A. I do not.

Q. Federal Coal Company?

A. I do not.

Q. Fairmount Coal Company?

A. I do not.

29711 Q. Maryland Coal Company?

A. I do not.

The Master: Are you quite sure, Mr. Sloan, that the Lehigh Valley and the Delaware, Lackawanna & Western are the only coal companies that you own stock in?

The Witness: I think those are the only ones: I don't know of any others.

The Master: I thought if you were quite sure I would not let him ask any more of these questions; if you are not, I will let him ask.

The Master: I don't remember any others; I don't want to make a statement that is not true.

29712 The Master: Mr. Sloan's testimony is that the only companies that he knows that he has any stock in, or that he recalls, are the Lehigh Valley Sales and the Delaware, Lackawanna & Western; and the only railroads carrying coal that he recalls is the Delaware, Lackawanna & Western Railroad. I have let you ask about all these other coal companies because Mr. Sloan was not prepared to say that he was sure he did not own stock in any others.

Q. You are a director of the New York, Lackawanna & Western Railway?

A. Yes.

Q. The Oswego & Syracuse Railway Company?

A. Yes.

Q. The Passaic & Delaware Railway?

A. Yes.

Q. The Syracuse, Binghamton & New York Railroad Company?

A. Yes.

The Master: Are those all coal carriers?

The Witness: Those are all under the D., L. & W. system.

Q. The Cayuga & Susquehanna?

A. Yes. 29714

Q. Of that you are president and a director?

A. Yes, sir.

Q. Do you own any stock in the United States Cast Iron & Foundry Company?

A. I do not.

Mr. O'Brien: That will be all for Mr. Sloan.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Do you know anything about the coal contracts of the Consolidated Gas Company of New York that have been acted upon by the Executive Committee?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled. 28715

Mr. O'Brien: Exception.

A. I do not.

Q. Your knowledge of those contracts comes from the report of proceedings of the Executive Committee?

A. It does.

Q. The board of trustees takes no part in the making of those contracts?

A. No, sir.

The Master: If you felt that there was anything to criticise about them, you as a trustee would raise a question in your board of trustees, would you not?

The Witness: Yes.

The Master: All of the action of the Executive Committee is subject to approval ultimately by the board of trustees?

The Witness: Yes.

The Master: And in that sense, you do have control over these coal contracts?

Mr. Ransom: I do not think these contracts were made subject to the approval of the board of trustees.

The Master: They must be. I do not mean
29717 to say—

Mr. O'Brien (interrupting): Your Honor, I am going to object to Ransom testifying. We have had a lot of his talk in this record, you know.

The Master: Whether or not they are made directly subject to approval by the board of trustee the board of trustees as the managing board and responsible board of the company, would have the right to criticise and take action with reference to any contracts.

Mr. Ransom: The contracts are made by the Executive Committee, under the testimony in
29718 this case. Of course, if Mr. Sloan or the board of trustees, when the minutes of the Executive Committee were read in the meeting of the board of trustees, felt that there was anything wrong, any ground for criticism, they would have a right and a duty to do so.

The Master: That is all I have said.

Mr. O'Brien: I object to the argument. It is not illuminating in this case, your Honor, to have Mr. Ransom interpolating his views on this record.

Mr. Ransom: I have nothing further.

29719

NICHOLAS F. BRADY, being first duly sworn as a witness in behalf of the defendants, testified as follows:

DIRECT-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Brady, where do you reside, in the City of New York?

A. I reside in Albany, but I live here.

Q. How long have you held stock in the complainant company?

A. The Consolidated Gas Company?

Q. Yes.

29720

A. For about twenty years.

Q. Two years?

A. Twenty years.

Q. And your father held stock in it and I suppose his estate has still stock in the company?

A. Yes, sir.

Q. And you are one of the executors of his estate?

A. Yes, sir.

Q. Will you state how much stock you have in the company?

Mr. Ransom: Objected to, immaterial, incompetent as a method of proof.

29721

The Master: Sustained. You have enough to be interested in the success of the company, I take it?

The Witness: Yes, I have.

Mr. O'Brien: Your Honor, I think it ought to be on the record.

Mr. Ransom: It is already on the record.

The Master: I am not going to bring out in this record any fact that is not useful to me in this case, simply to satisfy the curiosity of anybody.

29722

Mr. Ransom: As a matter of fact, Mr. O'Brien asked about everybody that we ever heard of named Brady as to the numbers of shares of stock in the company.

The Master: I have made my ruling.

Mr. O'Brien: Now, I have got to take exception to your Honor's comments. I think they are very unfair.

The Master: Take your exception.

Mr. O'Brien: Well, I do. I had in mind when I am asking those questions here—

The Master (interrupting): The interest of
29723 the witness.

The Master: The interest. Supposing he is interested in some other companies doing business with this, and their interest is, in terms of money, about the same.

The Master: Oh, that is not important.

Mr. O'Brien: Numerous deductions might be made. The question of the dominant interest.

The Master: If Mr. Brady has a stock interest in this company sufficient to make it of interest to him that this company succeed in this litigation, or its affairs be successfully managed, and he has stock in another company for which he
29724 makes the same answers, why I have a right to assume—

Mr. O'Brien: Yes, and the question of control is involved here.

The Master: What control?

Mr. O'Brien: And when I ask a question of that kind, I do not think it is fair to turn this into a melodrama. The question of the control of these affiliated companies is involved.

The Master: Next question.

29725

Mr. O'Brien: It has to do with many of the questions that I have raised along through the case, his relations to the Edison Company, to illustrate.

The Master: Next question.

Mr. O'Brien: Exception to the Master's ruling on my question.

Q. At the present time, Mr. Brady, you are a member of the Board of Trustees, and you are on the Executive Committee of the complainant company?

A. I am.

29726

Q. And you have been on that committee for a number of years running back to what time?

A. I think 1913.

Q. And you have been a fairly regular attendant at the meetings of the Executive Committee?

A. Yes, sir.

Q. And you would assume that the statement made by Mr. Addicks, the secretary of the Executive Committee, as to the meetings you have attended of the Executive Committee, is an accurate statement.

A. I would.

Q. And that you were present at those times?

A. Yes, sir.

29727

Q. And you own stock, I assume in the New York Edison Company?

A. Only of record.

Q. A nominal amount?

A. Only of record.

Q. What do you mean by "of record"?

A. All the stock really is owned by the Consolidated Gas Company.

Q. And is the same to be said of the United Electric Light & Power Company?

A. I am not quite certain about that. I own no stock there except qualifying shares.

Q. Now, as to the affiliated gas companies of the complainant, will you state what holdings you have in them?

The Master: I understood the Consolidated owned all, or if not all, a great part of that stock.

Mr. O'Brien: Let the witness state that, and we will pass on.

The Master: Isn't that the fact?

The Witness: I haven't any stock in any of the affiliated companies of my own.

29729 Q. You have extensive holdings in other gas companies, haven't you?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

The Witness: I have.

The Master: There has been so much talk in this case of Mr. Brady getting cheaper gas oil for other companies than he did for this company, that I will let Mr. O'Brien ask him about that, if he wants to.

Q. You are an owner of stock, a large amount of stock in the Kings County Lighting Company?

29730 Mr. Ransom: Objected to as immaterial, outside of any issue in this case, it is not one of the affiliated companies.

The Master: I will let Mr. Brady say whether he is a stockholder in the Kings County Lighting Company. I will strike out a large amount, because I am not interested.

The Witness: I am a stockholder.

The Master: Enough to be interested in the success of that company?

The Witness: Yes, sir.

Q. And in the Brooklyn Edison Company?

Mr. Ransom: Objected to as immaterial, not within any issue in this case.

The Master: Overruled.

Mr. Ransom: Exception.

A. No.

Q. And in the Municipal Gas Company of Albany?

The Master: Isn't the Brooklyn Edison what used to be the Kings County Electric Light & Power Company?

The Witness: He asked about the Kings County Lighting Company.

The Master: Oh, the Kings County Lighting 29732
Company, is that a different company?

The Witness: Yes, that is another gas company.

The Master: What was the name of the one that took the name of the Brooklyn Edison?

The Witness: Kings County Electric Light & Power.

The Master: In other words, there were two companies, Kings County Electric Light & Power Company and the Kings County Lighting Company.

The Witness: Yes.

The Master: It is the Electric Light & Power 29733
Company that took the name of the Brooklyn Edison Company about a year ago?

The Witness: Yes, sir.

Q. And in the Municipal Gas Company of Albany?

Mr. Ransom: Objected to as immaterial what is his interest in a gas company in Albany.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Yes, sir.

Q. That is a company that is litigating the statute regulating the price for its gas?

Mr. Ransom: Objected to. No bearing on any issue in this case.

The Master: I will allow it. Of course it does not do any harm except to identify the company.

The Witness: It is in litigation now.

Q. And you hold stock in the Peoples Gas Company of Chicago?

A. I do not think so.

Q. What is the title of that company in Chicago, if there is any, that you have stock in?

29735 A. You mean the gas company there?

Q. Yes.

A. I do not think I have any stock in it now.

Q. Well, up to what time were you interested as a stockholder in that company?

A. In any considerable amount about 1913, I think.

Q. You have not followed the affairs of that company since that time?

A. Well, only—I know some of those people, and I have talked with them about their company off and on.

Q. Not to make the record lengthy, will you state briefly the gas or lighting companies in which you

29736 are a stockholder, other than those named?

Mr. Ransom: Objected to as incompetent, immaterial.

The Master: I will allow it.

Mr. Ransom: Exception.

A. You do not mean the subsidiaries of the Consolidated Gas?

Q. No.

A. The Dayton Power & Lighting Company, the Memphis Gas & Electric Company, a company in Topeka, I do not know the name, I think it is the Consumers, I am not certain.

Q. Kansas?

A. Yes, sir.

Q. Have you any stock in the United Gas Improvement Company?

A. No, sir.

Q. What gas companies up state are you interested in besides the Municipal Gas of Albany?

A. Utica Gas & Electric Company and a number of subsidiaries of them; Troy Gas Company.

Q. Troy?

A. Troy, Cohoes.

Q. Glens Falls? 29738

A. Glens Falls that is one of the subsidiaries.

Q. Cohoes?

A. Cohoes Osocket.

Q. Are there any others that you recall?

A. Consolidated Gas Company of Baltimore.

Q. Are all of those companies at the present time litigating gas rates?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. What of the companies that you have named are litigating gas rates besides those already referred to, the Municipal Gas of Albany and the Kings County 29739 Lighting Company of Brooklyn?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception. I will ask the witness on the amount of stock he owns in each of those companies he has referred to, and take an exception to the Master's ruling as to the lack of necessity of finding that out.

Q. Are you a stockholder in the National City Bank?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it on the theory that I allowed it from Mr. Cortelyou.

A. No, sir.

Mr. Ransom: A stockholder?

The Master: Yes.

Q. Are you a stockholder in the National City Company?

A. No sir.

Q. You are a stockholder and officer, are you, of the United States Cast Iron & Foundry Company?

29741 A. Yes. I am not an officer, I am a stockholder and director.

Q. Stockholder and director?

A. Yes, sir.

Q. And your brother, James C. Brady, is a stockholder and director in the same company?

A. Yes.

Q. And they manufacture cast iron pipe?

A. Yes.

Q. And that company has sold pipe to the Consolidated Gas Company from time to time?

A. Yes, sir.

Q. The contracts with that company have been en-

29742 tered into under the resolutions of the Executive Committee of the Consolidated Gas Company?

A. They have been entered into by the officers, approved by the Executive Committee.

Q. By the officers you mean by Mr. Gawtry?

A. Well, I don't know; it depends on what department he is in.

Q. Well, he held himself forth here as the head of all the purchasing except oil, and I assume from that he is the officer to whom you refer.

A. If he testified to that, that is so.

Q. Well, substantially that; there are some variations.

A. Yes, sir.

Q. The Standard Oil Company of New Jersey, you hold no stock in that?

A. The Standard Oil of New Jersey? No.

Q. Either directly or through proxy?

A. I hold no stock.

Q. Or as agent; is that correct?

A. I hold no stock directly or indirectly.

Q. Do you hold stock in any oil companies?

Mr. Ransom: Objected to as already asked. 29744
The question is too broad in form.

The Master: I will let him say whether he owns stock in oil companies.

A. Yes, sir.

Mr. Ransom: Exception.

Q. You are the president of the New York Edison Company, Mr. Brady?

A. Yes, sir.

Q. And you are a member of the Executive Committee?

A. Yes, sir.

Q. And the Executive Committee fills about the same functions with respect to that company as the 29745
Executive Committee of the Consolidated does in the complainant company?

A. That is quite right.

Q. And you shape the policies of the company—the Committee does—subject to the approval of the Board of Directors?

Mr. Ransom: Objected to.

The Master: I sustain the objection upon the ground that I am not going into a question that I have ruled out a number of times, as to the activities of the electric lighting companies.

Mr. O'Brien: Having that in mind, your Honor, you will permit me to make the record.

The Master: Go on; I am not going to stop you.

Mr. O'Brien: I would like to ask some questions that will make a clean-cut statement on the record.

The Master: You may ask one or two more questions.

Mr. O'Brien: If your Honor will permit some questions it will show clearly the questions raised
29747 as to the relations between the two companies, their intimate relation and the effect the policies of one have upon the other.

The Master: Ask another question; I have sustained an objection to that.

Q. Mr. Brady, will you state what policy or programme, if any, has been adopted from time to time by the New York Edison Company as to how far it should promote its lighting business in the territory covered in part or in whole by the Consolidated Gas Company furnishing gas for illuminating purposes?

Mr. Ransom: Objected to on the grounds previously stated to this question put to other wit-
29748 nesses.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Have you gone into the question of the promotion expenses of the New York Edison Company and the promotion expenses and kindred expenses of the Consolidated Gas Company in the sale of gas for illuminating purposes?

Mr. Ransom: Same objection.

The Master: Sustained.

Q. To determine how far the illuminating business of the electric company should be allowed to in-

vade the field of the gas business of the complainant company.

Mr. Ransom: Same objection.

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Has there ever been any analysis or investigation made into the relations between the two companies, so far as they encroached upon one another in this respect?

Mr. Ransom: Same objection.

The Master: Sustained.

Mr. O'Brien: Exception. 29750

Q. Have you read the testimony of Mr. Carter given in this action?

The Master: Sustained.

Mr. O'Brien: Exception.

Q. Do you agree with the statements made by Mr. Carter as to the effect which was felt by the gas industry of the company by the development of the electric light business in this city?

Mr. Ransom: Objected to on the same grounds.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What were the net revenues as shown by the books of the New York Edison Company for the year 1919, the year 1918, and each year down to 1905, if you have that? 29751

Mr. Ransom: Same objection on the grounds previously stated.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Has the business of the New York Edison Company and the United Electric Light & Power Company been promoted to a greater degree than the gas business of the complainant company?

29752

Mr. Ransom: Objected to on the same grounds.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. When did the complainant company take over the New York Edison, Mr. Brady?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. How much did they pay for it?

Mr. Ransom: Same objection.

The Master: Same ruling.

29753 Mr. O'Brien: Exception.

Q. From what funds, if you know, of the complainant company, did the money come which was used in the purchase of the New York Edison Company and the United Electric Light & Power Company.

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Mr. Brady, you are intimately acquainted with the part played in the expenses of the Gas Company by gas oil and the price thereof?

A. I am.

29754 Q. And you know its close relationship to the question of the constitutionality or confiscatory character of a statute fixing the price of gas?

Mr. Ransom: Objected to as incompetent and immaterial.

The Master: Allowed.

Mr. Ransom: Exception.

A. Yes.

Q. You have been aware of that all during the period in which contracts for gas oil were made with the Standard Oil Company of New Jersey?

A. I have been.

29755

Q. Did you make, at any time, any effort, or use any argument, attempt any persuasion, upon Mr. William Rockefeller or anybody connected with the Standard Oil Company of New Jersey, to secure a less price for gas oil than that which was reported in the reports of Mr. Addicks to the Executive Committee from time to time?

Mr. Ransom: Objected to on the grounds stated when this question was put to Mr. Cortelyou. I think it is even more objectionable from this witness.

The Master: Allowed.

29756

Mr. Ransom: Exception.

A. I cannot answer that yes or no.

Q. Well answer it anyway you want, Mr. Brady—anyway you feel it ought to be answered. Have you

The Master: Let him answer it, then.

A. Let me answer it.

Q. The answer to the question, of course.

The Master: Surely.

A. Each time that a contract for gas oil came up they got bids and Mr. Addicks handled the bids of all the companies that we thought could or might supply the oil to us in sufficient quantities, and in each case we took the lowest bidder.

29757

Q. Have you seen the letters which were exhibits in this case covering the correspondence between Mr. Addicks and the representatives of oil companies?

A. I have seen certain letters. Whether they are exhibits or not, I do not know; I have not read the testimony. I presume they are the same letters you refer to.

Q. You do not assume they are some letters we have not seen in the case?

A. No, no.

Q. And that is the effort you refer to, to get the bids—the effort made by Mr. Addicks, is it?

A. Yes, sir.

Q. You have depended upon his judgment in that matter?

A. Not entirely.

Q. Well, added to that your own judgment, but it is not a matter that you go into minutely?

A. No, but in general I know the state of the oil market.

Q. You are a member of how many executive com-
29759 mittees or boards of corporations?

A. I could not tell you.

Q. Approximately. A great many?

A. Yes, quite a few.

Q. You are holding meetings every day, are you not?

A. No, not every day, but I attend a good many meetings.

Q. And the time that you can give to the business of the complainant company at its Tuesday meetings is quite limited, is it not?

A. It is limited, but I think sufficient.

Q. Sufficient to do whatever you want to do?

29760 A. Sufficient to give the thing the proper consideration and make the right answer to any—and get the right answer to any question raised.

Q. You have complete confidence in Mr. Addicks?

A. Absolutely.

Q. And the committee had complete confidence in him?

A. Certainly.

Q. And they have not at any time waivered in their confidence in him and his ability to negotiate a contract?

A. No, sir.

Q. And when he presented his report you felt that it should be O K'd?

A. Yes, sir.

Q. On the question of gas oil?

A. Yes, sir.

Q. Would you say, like Mr. Cortelyou, that the correspondence of Mr. Addicks with the representatives of some gas oil companies, as shown in the record in this case, displayed an earnest effort, the best effort that could be made, to get the lowest price for gas oil?

Mr. Ransom: Objected to on the ground he is not called upon to comment upon Mr. O'Brien's statement of the testimony of another witness. 29762

The Master: I will sustain the objection. I will let you ask the witness directly whether h believes he made an earnest effort.

Mr. O'Brien: Exception.

Q. Would you say from what you saw of the correspondence yourself that it represented the best efforts he could make, an earnest effort to get the lowest price for gas oil?

A. Yes, sir, I know it did.

Q. You know, Mr. Brady, that some companies get lower prices than others? 29763

A. Yes, sir.

Q. Some gas companies?

A. Yes, sir.

Q. I suppose you are acquainted with the prices paid by the Kings County Lighting Company for gas oil?

A. No.

Q. From time to time?

A. I have not been. I am not an officer of that company.

The Master: Are you a director of that company?

The Witness: No, sir.

Q. Well, you follow its business pretty closely, don't you?

A. No, not very.

Q. You have men there that keep you in touch with its affairs?

A. We have men there to run the business.

Q. Into what?

The Master: What do you mean?

20765 Mr. O'Brien: I infer the witness means that they run it successfully.

Mr. Ransom: If the Legislature lets them.

The Master: Let us get along with another question.

Mr. O'Brien: I am not trying to entertain anybody, your Honor; I wanted to find out if Mr. Brady knew just the relations between the prices paid by the Kings County Lighting Company for oil and those paid by other companies.

The Witness: No, sir; I don't.

Q. You don't recall the price paid of 3.03 cents by the Brooklyn Union Gas Company for oil?

20766 A. The Brooklyn Union?

Q. Yes.

A. No, sir.

Q. Were you acquainted during the time you were sitting on the board with the price paid by the Public Service Gas Company of New Jersey?

Mr. Ransom: What board?

Mr. O'Brien: The Executive Committee of the complainant company.

A. Well, I don't remember exactly, but I probably was at the time.

Q. You do not know whether Mr. Addicks ever called your attention to the price that was being paid by that company in New Jersey, the prices being paid by the United Gas Improvement Company?

A. Not definitely.

Q. Or by other companies in and around New York, Boston and Philadelphia?

A. Not definitely.

Q. He did not give you a complete report showing the investigation into the prices paid by other companies concurrently with these contracts, did he?

A. He gave us some prices, yes, as I remember. I 29768
do not remember what they were.

Q. His report was persuasive, was it?

A. I do not know just what you mean by persuasive.

Q. Well, was it approved and acted upon by the committee in the rush of its business, or did you just assume that he knew about all that could be known on that subject?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Q. What was the attitude of the committee toward it?

The Master: Objection sustained. There are too many questions in one, it is too involved, it 29769
assumes a state of facts not in evidence and it contains characterizations of testimony.

Mr. O'Brien: Exception.

Q. Mr. Brady, did you ever—

The Master: If you do not want to ask the witness the kind of question I have indicated I will allow, I will ask it myself.

By the Master:

Q. Mr. Brady, Mr. Addicks has from time to time brought in a report in reference to a proposed contract for oil?

A. Yes, sir.

Q. Accompanying that report would he have any data or information in reference to it?

A. Yes, sir; he gave us a good deal of information.

Q. Would that data and information and the proposed terms of this contract be taken under consideration by the Executive Committee?

A. Yes, sir.

Q. Would there be any rush about it?

A. No, sir.

Q. Would you ask such questions as appealed to
29771 you and would the other men ask such questions as appealed to them, pertinent to the question under discussion?

A. Yes, sir.

Q. As a result of those discussions do you know of any instance where you disapproved Mr. Addicks' report and recommendation?

A. No.

Mr. O'Brien: Right here—I was going to do it in the beginning, your Honor, but I will do it right here—register by objection to the examination of the witness by your Honor.

The Master: Yes.

29772 Q. As I understand it, having heard what Mr. Addicks said with reference to the proposed contracts, the Executive Committee invariably adopted his report and approved it?

A. Yes.

Q. Is that picture that I get correct?

A. That is correct.

By Mr. O'Brien:

Q. Have you talked with Mr. Addicks about this case, Mr. Brady?

A. Incidently.

Q. Well, it would be fair to assume, would it not, that what he produced here in court represented all what he presented to the board or to the committee?

Mr. Ransom: Objected to. How does he know?

A. I do not know what he presented to the Court: I have not seen the testimony.

Q. Well, has he discussed the matter with you?

A. Yes, in an incidental way.

Q. Then do you feel that you are sufficiently acquainted with the record in this case and his testimony here from your conversations with him to be able to 29774 say that he presented here all of the reports that he brought in to the committee?

Mr. Ransom: Objected to. It appears that h does not know the testimony in the case or the exhibits.

The Master: Objection sustained.

Mr. O'Brien: Let him state that.

Mr. Ransom: He has stated it.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did you ever say to Mr. Rockefeller that the price that the Standard Oil Company of New Jersey was charging was too much and you ought to get it 29775 cheaper?

The Master: Answer.

A. No.

By the Master:

Q. Did you ever believe that?

A. No, I did not.

Q. Did you ever feel that?

A. No.

By Mr. O'Brien:

Q. Why then, Mr. Brady, haven't you bought all your gas oil for all the companies you are interested in from the same company?

29776

Mr. Ransom: Objected to.

The Master: I will allow that.

A. On account of the fact that we always buy from every company at the cheapest price we can get.

Q. You were interested in the affairs of the Kings County Lighting Company; why haven't they right along bought a large quantity of oil from the Standard Oil of New Jersey?

A. Why, it is only a guess, but I assume that the Standard Oil of New Jersey would not make as low a price as the other men would.

29777 Q. Do you recall who the other men were?

A. No.

Q. You do not know the companies?

A. No.

Q. You control the business of the Kings County Lighting, don't you?

Mr. Ransom: Objected to.

The Master: I will let him say whether he does or not.

A. No, I do not control it.

Q. Are you not one of the voting trustees?

A. No, sir.

Q. When did you cease to be?

29778 Mr. Ransom: I object to it as immaterial.

A. I never have been.

Q. What?

A. I never have been.

Q. What has been your holding in the Kings County Lighting Company in the last ten years?

Mr. Ransom: Objected to as quite immaterial.

The Master: Sustained.

Mr. O'Brien: Well, it is not immaterial; it is very important and material. If this company was the one company to go in and buy gas oil it would

reasonably follow, your Honor, that Mr. Brady, who has so many of these gas companies, would get the same kind of a contract for them.

The Master: Next question.

Q. The Municipal Gas Company of Albany did not buy it from the Standard Oil of New Jersey, did it?

A. They don't now.

Q. The Utica or the other up-state gas companies do not purchase from the Standard Oil of New Jersey, do they?

A. The Utica does not.

Q. Do any of the others that you know of? 29780

A. No, I do not know what companies all the gas companies in the State of New York buy oil from.

Q. Do you know the companies from whom your companies buy oil—the oil gas companies?

A. In general.

Q. Well, you could state in a general way whether or not they do or they do not buy from the Standard Oil of New Jersey?

A. In general our companies do not.

Q. Do you know where the Brooklyn Union Gas Company of Brooklyn buys its oil?

A. No, sir.

Mr. Ransom: I object to this line of inquiry. 29781

Mr. O'Brien: Why, it is very important. Here is a member of the Executive Committee buys it.

The Master: Objection overruled. I know your point, Judge Ransom.

Mr. Ransom: It does not appear that any of these companies buy from the same company year after year; such an assumption is contrary to the fact.

The Master: Let Mr. O'Brien ask Mr. Brady anything that may possibly help us in this case.

29782 Nicholas F. Brady, Direct.

Mr. Ransom: Yes, but he does not want to confuse the record.

The Master: Up to this time it has helped you more than it has the defendants.

Mr. Ransom: I think that is true.

Mr. O'Brien: Then why don't you sit down.

Q. Do you know where the United Gas Improvement buys its oil?

A. No, sir.

Q. Or the Public Service Gas Company of New Jersey?

29783 A. No, sir.

Q. Can you recall when the Executive Committee first discussed the bringing on of a rate case to assail the statute?

Mr. Ransom: I object to that is immaterial.

The Master: Objection sustained.

Mr. O'Brien: Exception. Why, your Honor, this goes to the question of laches. They have asserted here in the complaint that the statute was confiscatory from the beginning.

The Master: I have made my rulings, they are not guilty of laches in this case.

Q. Do you recall whether or not you have read the

29784 complaint in this action, Mr. Brady?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. You had something to do with the beginning of the instituting of an action by the Kings County Lighting Company?

Mr. Ransom: I object to that as immaterial.

The Master: Objection sustained.

Mr. O'Brien: Why, your Honor, I want it clear on this record just how these various gas companies that are all interlocked with one another.

either with common ownerships or common officers or financial affiliations, how they started the onslaught on the statutes of this state. I think it is perfectly proper for me to bring out the fact that several of the important companies that are more or less dominated by the witness, have concurrently started action in various parts of the state to have these statutes annulled.

The Master: I have made my ruling.

Mr. O'Brien: Exception.

Q. Was it intended, Mr. Brady, that the Kings County Lighting Company case should be instituted as a trial heat for this action. 29786

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. You used the same experts in both cases, did you not?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Do I understand you to say that you have no stock in the Standard Oil Company of New York or New Jersey?

A. I haven't. 29787

Q. You have not?

A. I have not.

Q. Was there ever any intensive investigation made by you in your connection with the complainant company as to the advisability of having your own oil wells or oil supplies?

A. No, sir.

Q. Is it not a fact that the plan of owning their own oil wells has worked successfully with such large concerns as the Cities Service Company?

Mr. Ransom: I object to that as incompetent.

The Master: Objection sustained.

Mr. O'Brien: I assume the witness knows pretty intimately the matters of the success of various companies.

The Master: I have sustained the objection.

Mr. O'Brien: Exception.

Q. You were not officially connected with any of the affiliated companies of the complainant before 1913?

A. Yes, sir.

29789 Q. Were you then connected with the Astoria?

A. I was a director in several of the companies; I don't remember whether the Astoria or not.

Q. You cannot recall just the progress made by the Astoria Company from the time it started to make gas to the time it began to make coal gas?

A. No, sir.

Q. Have you in connection with your gas companies taken up the question of coal gas during the last four or five years?

A. Yes, sir, they are constantly at it.

Q. Did you rely upon Mr. Gawtry's judgment in the matter of coal, as you did on Mr. Addicks' in the

29790 matter of oil, in the Executive Committee?

A. Yes, sir.

Q. The reports were made in about the same form, or the same methods in the reports that came in?

A. Reported in a similar fashion, yes.

Q. Will you state briefly, Mr. Brady, what coal companies, if any, you have stock in or have had stock in since you have been connected with the Consolidated Gas Company?

Mr. O'Brien: I object to the question unless it relates to companies that have had some dealings with the Consolidated Gas Company.

The Master: I will let Mr. Brady answer.

A. I have had some stock in the D. L. & W. Coal Company, and in one southern company that does not come into this field at all.

Q. That is the Durham?

A. Durham Coal & Iron.

Q. Have you had any stock in the Philadelphia & Reading Coal Company?

A. No, sir.

Q. Or one similarly named?

A. No, sir.

The Master: I understand Mr. Brady's testimony to be that he owns or has owned stock in 29792
the Delaware, Lackawanna & Western, and that is the only company except the Durham Company somewhere down south.

Mr. O'Brien: If that is definite—

The Master: There is no doubt in your mind, is there?

The Witness: Yes, there is some doubt, I am interested in the D. & H. Railroad Company, and they own some coal.

Q. Do you know whether any of the coal companies owned by the Delaware, Lackawanna & Western have sold coal to the Consolidated Gas Company?

A. I can't tell you. 29793

Q. I find here in the minutes of April 1, 1908, Delaware, Lackawanna & Western Railroad Company contracts made. That is the company you have just referred to?

The Master: No, he said the Delaware & Hudson.

The Witness: And the D. L. & W.

Mr. Ransom: That was long before this witness was a member of the Executive Committee.

The Master: That doesn't make any difference.

Q. I will just run over these hurriedly, Mr. Brady. The Philadelphia & Reading?

A. No, sir.

Q. The Coal & Iron Company?

A. No.

Q. Lehigh & Wilkes-Barre Coal Company?

A. No, sir.

Q. Lehigh Coal & Navigation Company?

A. No, sir.

Q. Pittsburgh Coal Company?

A. No, sir.

29795 Q. Westmoreland Coal Company?

A. No, sir.

Q. Penn Gas Coal Company?

A. No, sir.

Q. Berwind-White Coal Company?

A. No, sir.

Q. The Maderia Company?

A. No, sir.

Q. Buckholz & Merrill?

A. No, sir.

Q. Weaver & Co.?

A. No, sir.

Q. Smokeless Fuel Company?

29796 A. No, sir.

Q. Heilner & Son?

A. No, sir.

Q. Dimmick & Co.?

A. No, sir.

Q. Fairmount Coal Company?

A. No, sir.

Q. Hutchinson, McCandlish Company?

A. No, sir.

Q. Maryland Coal Company?

A. No, sir.

Q. Lehigh Valley?
A. No.
Q. Philadelphia & Reading Coal & Iron Company?
A. No, sir.
Q. Delaware, Lackawanna & Western?
A. Yes, sir.
Q. Lehigh Coal & Navigation Company?
A. No, sir.
Q. New Central Coal Company?
A. No, sir.
Q. Federal Coal Company?
A. No, sir. 29798
Q. Consolidated Coal Company?
A. No, sir.

The Master: I don't see how it makes much difference whether Mr. Brady is or is not a stockholder in these coal or oil companies, or anybody else. If there is any proof to be offered that gas oil could have been bought cheaper than Mr. Addicks got it, or that coal could have been bought cheaper than Mr. Gawtry got it, let us have it.

Mr. O'Brien: You are still carrying the lantern looking for it?

The Master: You bet I am. 29799

Mr. O'Brien: Your Honor, I am afraid that short-circuit method of trying this case, at least of arriving at a determination eliminating the books and everything else, and getting down to what somebody can make gas for—

The Master: What do you mean by eliminating books?

Mr. O'Brien: Why, you have made the statement right along in this case that you don't care to know what is in the books, you don't care to know all the detail of the testimony that has come

29800

in here; what you want is to have some one tell you how much it costs to make some gas, coal gas or water gas, and then you will make up your mind in this case, and if necessary you will use all the other matters to confirm your judgment.

The Master: It may be pretty good confirmation when books are kept for years and years under the supervision of a Public Service Commission whose duty it is to check them up and call the officers of the company to account if they are wrong.

29801

Mr. O'Brien: I would not shake up the old bones of the Public Service Commission. Let them rest in peace. You know what I think of them.

The Master: I am going to make a ruling in this case that if we have statutes that mean nothing it is time to know it.

Mr. O'Brien: Your party controls the Legislature, and you can have them make the right statutes. If you want elasticity, as you have said, for some public body, you should know how to get it.

29802

The Master: When the statutes say that the Public Service Commission has a right to direct the way books shall be kept, and they do direct how the books shall be kept; when this company is required to make an annual report, and that is subject to inspection by the Public Service Commission, and that Public Service Commission has a right to go to the books and check up those reports, I say it is pretty nearly time we knew it if these books don't mean something.

Mr. O'Brien: These facts that you have enumerated may give rise to presumptions in some kinds of litigation, but not in rate cases, not in this case.

The Master: I am going to use it in this case.

Mr. O'Brien: You can't apply a series of presumptions in a rate case, because the United States Supreme Court has ruled otherwise.

Mr. Chambers: You don't mean to say that the Public Service Commission has a right to criticize the price they pay for oil?

The Master: No, I mean the amounts actually paid. Whether they are reasonable or not, I don't know what their power is as to that.

Mr. Ransom: They held a big hearing on 29804
that, as to the reasonableness of the price.

Mr. O'Brien: Yes, one of these big hearings they hold—

Mr. Ransom: Colonel Hayward—

Mr. O'Brien: It doesn't make any difference to me whether it is Maltbie or Hayward, my view won't change any with all due respect to them.

The Master: If you don't proceed to interrogate Mr. Brady, I will let him go.

Mr. O'Brien: Well, your Honor started this discussion.

The Master: Well, I am ending it.

Mr. Chambers: Perhaps it won't end here. 29805

The Master: I don't suppose it will. Any cross-examination?

Mr. Ransom: Just one thing.

CROSS-EXAMINATION BY MR. RANSOM:

Q. Mr. Brady, is it not a fact to your knowledge that all cast iron pipe bought by the Consolidated Gas Company is bought upon competitive bidding?

Mr. O'Brien: I object to that as incompetent, immaterial and irrelevant.

The Master: Objection overruled.

Mr. O'Brien: Exception.

29806

A. Yes, sir.

Q. And as a member of the Executive Committee, is it not true that the United States Castiron Pipe Company has not received a contract unless it was the lowest bidder?

Mr. Chambers: I object to that as incompetent.

The Master: Objection sustained.

Q. Do you know of any case in which the United States Castiron Pipe Company did receive a contract unless it was the lowest bidder upon that competitive bidding?

29807 Mr. Chambers: Objected to as incompetent, immaterial and irrelevant.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. No, sir.

Mr. Ransom: That is all.

ROBERT A. CARTER, recalled as a witness in behalf of the defendants, testified as follows:

DIRECT-EXAMINATION BY MR. O'BRIEN:

29808 Q. You have already testified that you are secretary of the Consolidated Gas Company?

A. Yes.

Q. How long have you been secretary continuously of the Consolidated Gas Company?

Mr. Ransom: That has all been covered.

The Master: Let us have it again.

A. I think since 1903; that is my best recollection.

Q. And prior to that—

The Master: We have had all that. I will let you ask how long he has been continuously secretary.

29809

Q. You have been continuously secretary since 1903?

A. Yes.

Q. And you testified you were connected with the Consolidated Gas Company since its organization?

A. Yes, sir.

Q. Before that you were with what company?

A. New York Gas Light Company.

Q. That was one of the companies that was swallowed up by the consolidation?

A. I do not accept your description of what transpired at that time. There was a consolidation of various companies, including the New York Gas Light Company.

29810

Q. And as secretary of the Consolidated Gas Company you said there came into your possession, did there, the books of the following companies: Manhattan Gas Light Company—

The Master: I think we have all that.

Mr. Ransom: It has been covered at great length.

Mr. Chambers: It is not clear. I have looked it up.

Q. (Continued.) New York Gas Light Company; Metropolitan Gas Light Company; Municipal Gas Light Company; Knickerbocker Gas Light Company; Harlem Gas Light Company.

29811

A. I have not so testified.

Q. The books of which of those companies came into your hands, or some of the books.

A. Not any of them.

Q. None of them?

A. Not any of them.

Q. None of their books or records ever came into your hands?

A. No.

Q. As secretary?

A. No.

Q. Do you remember testifying in this very case that some of the books and records of those companies were in the custody of the Consolidated Gas Company?

A. In the custody of the Consolidated Gas Company? In the possession of the Consolidated Gas Company, yes, I have testified to that effect.

Q. Who had charge of them when they were in the custody of the Consolidated Gas Company?

29813 A. I don't think they were in anybody's charge. They were simply in the Company's possession, stored away somewhere. They were not considered records of the Consolidated Gas Company.

Q. Were they the books and records of all those companies which I have named?

A. No. My best recollection is that we never had the books of the Knickerbocker Company in our possession.

Q. Did it include the books of the other companies, with the exception of the Knickerbocker Gas Light Company?

A. I don't know that the books of the Metropolitan
29814 Company were ever in our possession. They were examined in the proceedings in 1886. I know that because the investigation made at that time included the records and accounts of the Metropolitan Gas Company, but I think the examination of those books was made in the office of the old Metropolitan Company, which was then a branch of the Consolidated Gas Company. I don't think they were ever in the general office of the Consolidated Company.

Q. Then were the books of these other companies I have named with the exception of the Knickerbocker and the Metropolitan in the custody of the Consolidated Gas Company?

A. My only reason for believing that they have been is the fact that they were examined by Marwick & Mitchell.

Q. And by Yalden?

A. No, I am talking of Marwick & Mitchell in 1906, the report made by Marwick & Mitchell covered accounts of the predecessor companies except the Metropolitan Gas Light Company and the Knickerbocker Gas Light Company.

Q. Have I named all of the companies that were consolidated a minute ago?

A. I did not particularly notice whether you cov- 29816
ered them all or not.

Mr. Ransom: This has all been gone over. What is the use of taking up time again.

Q. Look at that list, that is all, Mr. Carter?

A. Yes, those are all of the predecessor companies.

Q. Where were the books stored, if they were stored, on the property of the Consolidated Gas Company?

Mr. Ransom: I object to that as having been gone into at great length.

Q. Speaking of the books that were in existence?

The Master: Do you want to show their loss?

Mr. Chambers: Secondary evidence I am com- 29817
ing to.

The Master: Mr. Carter admits they have disappeared and he cannot locate them.

Mr. Chambers: Your Honor ruled out the Yalden report. I am going to reoffer it, under a ruling you have made. I am coming to that in a minute.

The Master: You can bring out very quickly from Mr. Carter the fact that all of these books are gone and we cannot get them, he cannot find them.

Mr. Chambers: It is more important than that that I want to show.

The Master: What is it?

Mr. Chambers: I want to show that they disappeared while in the custody of the Consolidated, which changes the rule, if I can.

Q. Now, Mr. Carter, do you know when those books disappeared, if they did disappear? Where did you last see them?

A. I do not know that I ever saw them. I never had occasion to examine them myself. At least I
29819 have no recollection of having done so.

Q. Mr. Yalden examined them, of course?

A. His report indicates that he did.

Q. And he must have had them, of course, if he examined them?

A. I am assuming that.

Q. When did you last know of their being in existence? You have spoken now of 1906, when Marwick & Mitchell had them?

A. That is the last.

Q. You have not seen or heard of them since that time?

A. I have not.

29820 The Master: Mr Chambers, just to save time, let us assume now that Mr. Carter says that they were, so far as he knows, in the Consolidated Gas Company's office somewhere in that building, and he does not know what has become of them, and he cannot find them.

Mr. Chambers: Don't you see, if the Attorney General had them, that would be one thing; if the Public Service Commission had them, or Mr. O'Brien's client had them, that would change the rule. I want to trace them last to their possession.

29821

The Master: Let us assume now that you have traced it to the point and developed the evidence to the most favorable point. See what I mean?

Mr. Chambers: Yes.

The Master: How could you get Yalden's statement in?

Mr. Chambers: Because it is secondary evidence of the contents of the books. He is dead.

The Master: What does it prove?

Mr. Chambers: Let me complete this, so I can make the record.

The Master: How can you prove that is a correct copy of the books? 29822

Mr. Chambers: We are entitled, when we trace them to their possession, to the best evidence we can get. I am coming to that in a minute to see if there is any other place in this world where we can get the contents of those books. I understand the rule to be like this: We trace the books to their possession, they are gone.

The Master: Yes.

Mr. Chambers: The last known of them, they were in their possession.

The Master: Yes.

Mr. Chambers: That is the first proposition. Second, a man examines them in an official capacity. 29823

The Master: Yes.

Mr. Chambers: And he made a memorandum which shows the contents of them.

The Master: Yes.

Mr. Chambers: And he was acting at the time for the Legislature of this State.

The Master: That is where—

Mr. Chambers: It was adopted by the Legislature.

29824

The Master: That is where I begin to disagree with you.

Mr. Chambers: No, you won't. It was adopted by the Legislature, and it was made by Yalden, not with a view to litigation.

The Master: That doesn't make any difference.

Mr. Chambers: But I just want to make a record, and you differ with me on the law.

Mr. Ransom: You have traced them now into the possession of the experts of the Corporation Counsel. The last person who has seen them is
29825 the expert of the Corporation Counsel.

Mr. Chambers: Will you direct counsel to subside for a minute.

The Master: I am tired making those directions.

Mr. Chambers: Your Honor may rule us out, and may rule out the evidence, but I insist that I am going to lay the foundation for what I think is proper, and you said we might have that in in effect.

The Master: I am going to let you lay foundations, but what I want to know is how you prove that your copy is correct?

29826 Mr. Chambers: I am going to prove it by the fact they offered in evidence the whole committee's report, and it is an appendix to the report. He offers—I was mistaken the other day—I find he offered the entire committee's report in evidence, and this is a part of that report, and I am going to read and show you where it is a part. That makes it authentic enough.

The Master: Go on, lay your foundation.

Mr. Chambers: It is in anyway, I think, the appendix to the committee's report. It is Appendix D, is all I want.

Mr. Ransom: Certain pages were offered by you, and certain pages by us.

Mr. Chambers: We based our case on the fact that you stated you would admit it sometime ago. It is in the record.

The Master: Go ahead.

Q. Now, Mr. Carter, do you know who has the custody and control of those books at the present time?

A. I do not know.

Q. Do you know where they are in this world?

A. I do not.

Q. Do you know any place where any of the defendants in this case, or anybody else, might find the contents of those books outside of the Yalden and Marwick & Mitchell reports? 29828

A. They have been in the custody of representatives of the defendants. Well, I won't say the defendants. If Marwick & Mitchell represented the City of New York, the last time those books were inspected or used for any purpose, was when they were used by Marwick & Mitchell.

Q. Where?

A. The defendants in the prior case.

Q. They came there to the Consolidated Gas Company? 29829

A. They worked in our office.

Q. On the books?

A. Not only the books of the predecessor companies, such as they were able to find or we were able to find for them, but on the books of the Consolidated Company.

Q. Outside of the Yalden report and outside of the report of Gilbert's committee of the Senate, he and his two associates, do you know of any place on this face of the earth where the contents of those books might be obtained?

A. Marwick & Mitchell's report covered those books.

Q. I say excluding Yalden and Marwick & Mitchell's report?

A. Yes.

Q. Do you know of any place on the face of the earth where the defendants might obtain the contents of the books?

Mr. Ransom: I object to the question, it does not appear that even from those they could obtain them.

29831 The Master: I will allow it.

A. No, I do not know of any.

Mr. Ransom: It is purely a trick question in form.

Q. Those companies are all out of existence now that caused the consolidation?

A. Yes.

Q. And went out of existence when the consolidation took place?

A. They did.

Q. Their business and their affairs were wound up?

A. They were.

29832 Q. And they have not performed any functions as corporations since that time that you know of?

A. Not that I am aware of.

Q. Did you at that time examine Mr. Yalden's report?

Mr. Ransom: Objected to as immaterial.

Q. In detail?

The Master: I am going to allow that.

The Witness: I did very thoroughly in connection with the prior proceedings.

Q. And did you examine Marwick & Mitchell's report?

A. I did.

Q. And do you recall that the Yalden report was offered in evidence in the prior suit between the Consolidated Gas Company and Mr. Mayer as Attorney General?

Mr. Ransom: Objected to as immaterial.

The Master: That is immaterial. You say that you looked at the Yalden report?

The Witness: I did.

The Master: In so far as that gave extracts from the books, was it correct? I do not mean inferences drawn from it, but the figures, were they correct? 29834

The Witness: I gathered the impression, your Honor, not so much from the record which purported to be made from the books as from Mr. Yalden's own testimony, that his figures were quite unreliable.

Q. The Master asked you just in so far as it contained figures taken from the report without his inferences or conclusions. Have you any reason to challenge the accuracy?

A. Why, yes, I can challenge the accuracy of Yalden's figures.

Q. That is the figures taken from the books?

A. Taken from the books, from his own testimony given before that committee. 29835

The Master: How about Marwick, Mitchell & Peet, or Marwick & Mitchell, were their figures correct?

The Witness: They had nothing—they used Yalden's report, your Honor, in respect of the Metropolitan Company, and of course they did not have the Knickerbocker Company at all, so that it was incomplete as a compilation of the affairs and records of the predecessor companies; it was short two companies.

The Master: Who offered that in evidence in the prior suit?

Mr. Chambers: Yalden?

The Witness: In the prior suit it was offered by the City, in the prior suit.

Mr. Chambers: Yalden's?

The Witness: No, Marwick & Mitchell's.

Mr. Chambers: I think both reports were offered by the defendants.

The Master: In the prior suit?

Mr. Chambers: I think so; I am not sure.

29837 The Master: Was Yalden called as a witness?

Mr. Chambers: No, it was offered right in evidence.

Q. Now, to follow this up, Mr. Carter, in view of your statement that you challenge the figures, did you ever check the Yalden figures with the books of the companies to see if there was any error so far only as it stated the contents of books?

A. No.

Q. How can you say that Mr. Yalden's figures, leaving out his conclusions and his inferences drawn from them—the figures, the naked figures taken from the books, how can you say that they are not correct?

29838 Mr. Ransom: Objected to, immaterial.

Q. If you did not check them with the books?

A. I stated why.

Q. You have stated why, because of his inferences and conclusions?

A. No, because of the contradictions between his statements and his tabulations.

Q. Look at his report and tell me wherein he made any contradictory statements?

The Master: He said in his testimony.

Mr. Ransom: I object as wholly immaterial. How can that bear upon any issue of this case?

Mr. Chambers: You must, if you challenge the accuracy of the figures, you must have checked them with the books.

Mr. Ransom: I ask how may Mr. Chambers put Mr. Carter on here and put up a strong argument—

Mr. Chambers: I wish the Court would call Mr. Ransom to order, and the first point is for him to sit down, and the second point is—I know he is very much concerned about this—the second point is, if he has any objection, to state it, and the third point is not to interrupt orderly procedure. 29840

Mr. Ransom: If Mr. Chambers is finished, I will now state my objection. I object because it has no bearing on any issue of this case. Mr. Carter is called to the stand by Mr. Chambers and is asked to comment upon a report which is not in evidence, for which no foundation has been laid.

The Master: Proceed, Mr. Chambers.

Q. If you did not check the figures in his report taken from the books, or did you do that?

A. No.

Q. How do you know, how can you challenge the correctness of them? 29841

Mr. Ransom: Objected to, immaterial.

The Master: Allowed.

Mr. Ransom: Exception.

A. That statement is based upon a recollection of a study that I made in connection with the prior suit, not only of Yalden's compilations alleged to have been made from the books, but from his testimony before the committee.

Q. You don't know whether the figures that he took from the books are not accurate, the figures themselves?

A. I should have had to go all over that work and do it all over again in order to point out.

Q. You would have to have the books?

A. No, I would not have to have the books. I would have to go over his testimony again and his records and find whatever evidence led me to believe at that time that his records were not correct.

Q. In order to find out whether his figures taken
29843 from the books were inaccurate, you would have to have the books to check them, wouldn't you?

A. No, not necessarily.

Q. How would you check them? If he took a million dollars from the books and put down a million dollars in his report, how would you be able to check that if you did not have the books?

A. This testimony.

Mr. Chambers: Would the Master like to ask Mr. Carter any questions?

The Master: These tables do not purport to be copies of the books.

Mr. Chambers: They are records taken right
29844 from the books, according to the opinion of the committee.

The Master: Yes, they are tables prepared by this expert, an analysis made by him.

Mr. Chambers: From the books.

The Master: But they are not copies of the books.

Mr. Chambers: Not complete copies, but the figures are taken right from their books.

The Master: Yes, but they are tabulated in the form this expert deemed wise for his purposes. For instance, he has here an analysis of profit and loss.

29845

Mr. Chambers: I am not asking for that, if your Honor please.

The Master: And summaries of various things.

Mr. Chambers: If the Master please, I am asking to exclude—I will permit that to be excluded.

The Master: The whole thing seems to be summaries and tabulations.

Mr. Chambers: No, he states exactly the cost of real estate which is taken right from the books.

The Master: You make your offer when you get to it, and I will rule on it.

29846

Q. Weren't you really in charge of the books, Mr. Carter, when they were in the company's possession, of these old companies, the books of these companies I have named.

Mr. Ransom: Objected to, fully gone into.

A. No.

Q. Whose charge would you say the books were in?

Mr. Ransom: This was gone over day after day.

Q. I call your attention to page 4984 of the record, your testimony, and read, "Q. Were you in charge of those books at that period," speaking of the same— I am going to show this to Mr. Carter and let him see what he said.

29847

Mr. Ransom: I object. What record are you reading from, what page of the record?

Mr. Chambers: Page 4984, you were asked this question: "Q. Were you in charge of those books at that period?" We were speaking of the old books, as you see over here further, we are speaking of Mr. Yalden's report and the books of the constituent companies which were organized into the consolidation. Well, maybe you

better look to make sure, and then we asked you, "Were you in charge of those books at that period? A. Yes, I was nominally in charge, your Honor, but I want to correct a statement that was made by Col. Hayward."

The Witness: Nominally in charge, yes. I should say, I presume I was nominally in charge, but from 1886 to 1906 I do not think that anybody saw those books or looked at them. They were stored somewhere in the basement of the office, the old office, no longer existing.

29849 Q. Then you said this, "In 1884, at the time of the consolidation, records of proceedings before a legislative committee at that time indicated that a Mr. Yalden was an accountant of that committee or for the minority of the committee about the books of all six companies and furnished evidence of them." Do you recall that?

A. Yes, if I made that statement, I would now like to correct it, because I am very sure that he hadn't the books of the Knickerbocker Company.

Q. Then you were asked this question, "'Who is there in your company who knows about these books? Who has charge of them?"

29850 Mr. Ransom: What page are you reading from?

Mr. Chambers: I wish counsel, your Honor, would not interrupt me so much.

The Master: He has a right to know what page you are reading from.

Mr. Chambers: Page 4982, the bottom of the page. "Who is there in your company who knows about those books? Who had charge of them when the consolidation took place? A. I do not think anyone had charge of them. I think they were simply in some store room of the old Irving

Place Building. Q. Who has charge of those, who in the company as the responsible official? A. I have charge of them."

A. Well, I have explained that nominally all the books and records of the company are in my charge. They were not current books, they were not books or records of the Consolidated Company, but I should assume perhaps that my duties might be construed in covering the books of the predecessor company so long as they were in the General Office Building.

Q. And you say now that they have not been found since you testified here on October 21, 1919, in this case? 2985

A. I have stated, I think, several times, that a most diligent search has been made for those books, and that they have not been found. That is of the four companies out of the six which Marwick & Mitchell had.

Mr. Chambers: I think that is all for Mr. Carter.

The Master: Cross-examination, Mr. Ransom?

Mr. Ransom: No cross-examination.

Mr. Chambers: Now, I call the Master's attention, preparatory to offering the Yalden report to the following, and I haven't the minutes here now, but when counsel offered the report of the Senate Committee he offered, a fact I did not have in mind before, all of the report, both of Gilbert and his two associates, Robinson and Murphy. That is one thing. And the Yalden report, the minutes will bear me out. 2985

The Master: And you say this is part of the report?

Mr. Chambers: I do.

The Master: Then it is in evidence, if what you say is correct.

29854

Mr. Chambers: Well, I am stating this, and I am satisfied if your Honor says it is in evidence.

The Master: I say if what you say is correct, it is in evidence.

Mr. Chambers: It might be said that you specifically ruled out a portion of what I think is in evidence.

The Master: I don't know what the record shows on that point now. All I say to you is that if your statement is correct, and Mr. Ransom offered the entire report.

Mr. Chambers: And then I said this, I have
29855 looked it up since, "Do you include Appendix D?" And he dodged the question, and he said, "I am offering the report of the committee," and I said, "I want to know if Appendix D is included," and he would not answer my question.

The Master: Yes.

Mr. Chambers: That is the Yalden report.

Mr. Ransom: I offered that page by page.

The Master: All right, you have called my attention to it.

Mr. Chambers: Now I ask counsel to subside for a minute until I finish.

The Master: Yes, subside, Judge Ransom.

29856 Mr. Ransom: I am in a perpetual state of subsession, as Mr. O'Brien would say.

Mr. Chambers: He has a habit, he thinks, you know, that he is in the Public Service Commission or on the City Court bench, and that he can interrupt us to the extent that I will forget the point that I am about to make, but he is mistaken, he will find out I am more determined than he imagines. My point is that he offered the whole report, and that this is a portion of it. That is the first thing. Now, the second thing is, I call your attention—

29857

The Master: My answer to that is that if your statement is correct, then you do not have to offer any other portion of the report.

Mr. Chambers: Well, I would like to have your Honor—you specifically ruled it out now, and as it stands now we could not use it.

The Master: Go ahead.

Mr. Chambers: Now, the second—

The Master: Oh, sit down, Judge.

Mr. Chambers: The second situation to which I call your attention, to which I did not call attention before, is found on page 4989 of the record, *et seq.*, and without reading all of that 29858
in detail, I call your attention to what you said in regard to this matter.

"The Master: Let me ask you, Mr. O'Brien, in view of the testimony of Mr. Carter that these books are lost, haven't you made a very firm foundation for the use of copies of them made by Marwick & Mitchell? Do you need the original books in court if you have full extracts from them?"

The Master: I so say yet.

Mr. Chambers: "Mr. O'Brien: Well, I can't say at this time your Honor, just how deeply they went into that, and I could not give you an 29859
adequate answer.

"The Master: We will probably find, when we are all through with it, that Marwick & Mitchell have extracted from all of these books everything that you want; and in view of Mr. Carter's testimony that the books are lost, I will let you use copies with the same force and effect as the originals."

The Master: And I say so yet.

Mr. Chambers: You say it yet?

The Master: And I will let you use copies.

29860

Mr. Chambers: "And I will let you use copies with the same force and effect as the originals."

The Master: I will say that yet, if you will prove your copies.

Mr. Chambers: Then I call your attention to page 5002 of the record, when Mr. Carter was on the stand:

"Mr. O'Brien: I want to bring home to the witness the knowledge of the importance of some of these books, knowledge that will throw upon him additional responsibility for these books.

"The Master: Let us find the books.

29861 "Mr. O'Brien: There is a lot of money hinging on this.

"Mr. Ransom: There isn't a cent.

"The Master: I don't think so. I think you have it all in Mr. Yalden's tabulations."

The Master: Well, prove they are correct. I will let them in. I did not know at that time Mr. Yalden, or whatever his name is, was dead. I did not know whether Marwick & Mitchell were dead.

Mr. Chambers: It appears already that Mr. Yalden is dead.

The Master: I did not know it then.

29862 Mr. Ransom: I say this because perhaps your Honor may correct your erroneous ruling because we did not call your attention to all these things.

The Master: My ruling was correct then.

Mr. Chambers: I offer in evidence, taken from the same book, from the printed record of Weed, Parsons & Company, Official Legislative Printers —this is the way he proved his copy—from Volume IV of the Senate Documents of 1886, Nos. 47 to 70 inclusive, the Yalden report, Defendants' Exhibit AA47 for identification.

The Master: Do you consent to it?

29863

Mr. Ransom: I object to it.

The Master: Objection sustained.

Mr. Chambers: Exception. Now I ask your Honor to state why you so rule?

The Master: I decline to state any further than I have already stated.

Mr. Chambers: To that I also take an exception. I ask your Honor to state if your ruling is because of the fact it is already in?

The Master: I decline to make any statement. If Mr. Chambers could bring somebody here to prove they are correct copies I would take them; if he cannot I will not take them.

29864

Mr. Chambers: It is taken from the official record.

The Master: No, that is not proof. It is proof only that that printed copy is a correct copy of the Yalden report.

Mr. Chambers: Yes.

The Master: That is all that proves. But it does not prove that the Yalden report contains correct copies of the books of these companies.

Mr. Chambers: It is certified to by the committee. I now call attention to the report of the committee which is in evidence, the last paragraph as follows: "The oral testimony and proceedings of the committee and such of the numerous documents that were before the committee as it was deemed expedient to append thereto, are herewith submitted," and that report is in evidence.

29865

Mr. Ransom: And on page 8346—

Mr. Chambers: Are you offering, or what are you doing Judge?

The Master: Let Mr. Chambers finish, please.

Mr. Chambers: I am offering something and he is offering something.

The Master: Let Mr. Chambers finish what he has to say.

29866

Mr. Ransom: I thought he had finished.

Mr. Chambers: No, I am making my offer. I call the Master's attention to that, and then I say: "How would it be possible for the defendants to prove that the report so far as it relates to the values taken from the books of these companies, is correct, when Yalden is dead, when all the members of the committee are dead undoubtedly, and when the books of the constituent companies are missing? I mean that would be a physical impossibility."

The Master: Has anybody got the record
29867 here in which that report was offered?

Mr. Ransom: Right here.

Mr. Chambers: There is one thing more I want to call to your attention. That was an exhibit in the other case and was printed by the printer, and perhaps the record was certified—I don't know—in the United States Supreme Court. What is counsel now handing up to the Court?

The Master: I asked him to show me where it was offered. I want to see it.

Mr. Chambers: Where the Yalden report was offered?

29868 The Master: No, the report.

Mr. Chambers: Where it was offered?

The Master: Yes. I am going to reserve decision on this until Monday morning. I will decide this at 9:30 Monday morning.

Mr. Chambers: I now offer in evidence the Marwick & Mitchell report found in the previous record. It was an exhibit in that case and I have it here.

The Master: You can call one from Marwick & Mitchell's to prove the accuracy of that. I know they are still in existence because I know they are doing business.

29869

Mr. Chambers: Here in town?

The Master: Yes.

Mr. Ransom: And this report was based on the Yalden report and not on the books.

The Master: I do not know anything about that, but I will not receive it just because it was an exhibit in the other case.

Mr. Chambers: Well, the witness, Mr. Carter, has here stated—

The Master: No, I will not take it. You produce Marwick & Mitchell or somebody who knows about it, to swear that that report or the tables in it was a correct extract from the 29870
books.

Mr. Chambers: I will offer it at the present time.

Mr. Ransom: Objected to on the grounds already indicated.

The Master: Objection sustained.

Mr. Chambers: I was going to offer it and ask your Honor to reserve your ruling.

The Master: No, it is easy to bring Mr. Marwick & Mitchell or somebody to prove the accuracy of it.

& Mitchell or somebody to prove the accuracy of it. 29871

Mr. Chambers: I offer the report of Marwick & Mitchell Company, Chartered Accountants, dated November 26, 1906, Exhibits "A," "B," "C," "D" and "E" of that report found at pages 5870 to 5883, excluding pages 5881-5882, of the record in the Consolidated case.

The Master: Go ahead with something else.

29872 Richard E. Delehanty, Direct.

RICHARD E. DELEHANTY, a witness called by the defendants, was sworn and testified as follows:

DIRECT-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Delehanty, where are you employed?

A. I am employed by the City of New York as a Deputy Tax Commissioner.

Q. How long have you been a Deputy Tax Commissioner?

A. Since 1908.

Q. And you were appointed to that office after a
29873 competitive examination?

A. I was.

Q. And took the oath of office?

A. Yes, sir.

Q. You are in the competitive schedule of the civil service?

A. I am.

Q. And before you were appointed a Deputy Tax Commissioner what was your business?

A. I was a clerk in the Tax Department for ten years prior to that.

Q. And before that what business?

A. Why, I was a bookkeeper for two years.

Q. In real estate?
29874

A. I have managed real estate for about three years, with Havens & Beebe.

Q. Rented real property?

A. Rented it.

Q. Bought and sold?

A. No, I did not buy and sell any.

Q. Rented it?

A. Just managed real estate.

Q. During all these years have you kept track of the values of real estate in Manhattan?

A. What is that?

29875

Q. During the time you have been Deputy Tax Commissioner have you kept track of real estate?

A. From 1910 I have.

Q. And the sales of real estate?

A. Sales, mortgages, leases.

Q. Both improved and unimproved?

A. Improved and unimproved.

Q. And mortgages?

A. Mortgages.

Q. Rentals?

A. Rentals and leases.

Q. Leases?

29876

A. Leases and so on.

Q. You are familiar with the values, then, of real estate both improved and unimproved in the City?

A. I presume I am.

Q. Have you appraised property as Deputy Tax Commissioner in the different districts?

A. I have.

Q. Will you turn to Block 1157, Lot 1, for the year of 1910. Did you assess that for tax purposes in 1910?

A. I did.

Q. That was for the tax of 1910?

A. That was for the tax.

29877

Q. And your valuation was as of the second Monday of January, 1910?

A. Yes, sir, 1910.

Q. And you visited the property?

A I did.

Q. And looked it over?

A. I did.

Q. Can you give me the size of the property as you assessed it?

A. The size of the property was 200 feet 10 inches by 800 feet.

Q. It occupied the whole block?

A. Occupied the whole block from 65th Street, to 66th Street bounded by West End Avenue and Amsterdam Avenue.

Q. What valuation did you place upon it then?

A. I figured the land to be worth at that time—

Q. Just the land, wholly unimproved?

A. Wholly unimproved $600,000.

Q. Did you assess it for the 1911 taxes?

A. I did.

Q. And you visited it and looked it over?

29879 A. I did.

Q. What value did you place upon it for 1911?

A. On the land?

Q. Yes.

A. $600,000.

Q. Are you able to split that up, Mr. Delehanty, and give me for the 1910 tax that part of it which would be 500 feet on West End Avenue?

A. You mean can I apportion it?

Q. Yes.

A. Now, here?

Q. Yes, the West End Avenue frontage of 500 feet.

29880 Mr. Goetz: I object to that, that at the time the witness made the assessment and the valuation he made no such apportionment.

The Master: Overruled. While the witness is doing that I want to spread this on the record. As I understand it, Judge Ransom, you offered and I received at your request pages 1 to 81, numeral figures, excluding as I stated the pages you referred to. It was the printed document known as 47.

Mr. Ransom: Yes.

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Mr. Chambers: Yes, I used the same volume that he used.

The Master: That is endorsed on the back, "Documents of the Senate, 1886, Vol. IV, Nos. 47 to 70, inclusive." The fly leaf is endorsed, "Documents of the Senate of the State of New York, 109th Session, 1886, Vol. IV, Nos. 47 to 70, inclusive." The first page begins, "State of New York, No. 47. In Senate, March 1, 1886," which would indicate that it is Senate Document No. 47. That Senate Document 47 runs down to page 938, and page 939 begins "Senate Document No. 48." Now I am calling attention of 29882
counsel to the fact that what was offered was part of Document No. 47. I am inclined to think that there is a good deal of force in the proposition advanced by Mr. Chambers, in a different way, but you offered the part of Senate Document 47.

Mr. Ransom: Let me show you on page 8346 what I did do. I read from page 8346: "Mr. Ransom: I offer in evidence a report signed by T. Robinson and M. C. Murphy, to the Senate of the State of New York"—and then described the publication.

The Master: How did you describe the publi- 29883
cation?

Mr. Ransom: "The same being Senate Document No. 47, in the Senate."

Mr. Chambers: We quoted it just alike.

Mr. Ransom: Mr. O'Brien said, "I ask the purpose of the offer of the proof."

The Master: Judge Ransom, do not read any more. I am telling you now that I am inclined to think that Mr. Chambers is entitled to have the balance of Senate Document No. 47 in evidence, you having offered part of it; but I am reserving decision until Monday morning.

Mr. Ransom: I offered pages 1 to 81, inclusive, I am not offering the testimony.

The Master: But you cannot stop the other side from offering the balance of the document.

Mr. Ransom: Mr. Chambers said: "As I understand it, it takes in Appendix D, does it?"

Mr. Chambers: All I have to do is to quote Judge Ransom on that.

The Master: Decision is reserved until Monday morning. My disposition now is to let it in as the balance of Senate Document No. 47.

29885 Mr. Ransom: Do you think a minority report is necessarily a part of a majority report?

The Master: I do not care what is what; here is a part of a printed document No. 47, Senate Document, from which you read.

Mr. Ransom: I read a report from it.

The Master: I do not care if you read a description of the moon from it.

Mr. Ransom: I can give you authorities on that.

The Master: For once I am inclined to be against you good and firmly, but I will reserve decision until Monday morning.

29886 Q. Now, have you split up that Block 1157, Lot 1 for me?

A. I have.

Q. Give me, will you, the valuation for those two years, 1910 and 1911 on that portion of it which is bounded by West End Avenue, and 500 feet deep?

A. I figured the total value to be $331,000.

Q. For both years?

A. For both years. The valuation is the same in each year, so the apportionment will be the same.

Q. The sum that you have given for those two years, 1910 and 1911, is that the sum for which in

your judgment that property would sell at that time, wholly unimproved?

A. I believe it would.

Q. Is it your judgment that it is the full value of the property unimproved?

A. I think so.

Q. Did you find some improvements on it?

A. I did.

Q. In the nature of what?

A. I found two large gasometers, and six small ones, together with the buildings.

Q. Without stating the amount, how did you value 29888
the improvements? Did you value the buildings separately?

A. I placed a value on the buildings and I placed a value on the gasometers.

Q. Was anything in the buildings, any contents?

A. Why, there were boilers and pumps and gates that controlled the pipes.

Q. Did you value those separately?

A. Yes, sir.

Q. Give me the value you placed on the buildings, excluding the contents and excluding the gasometer, for 1910 and 1911?

A. The buildings I valued at $125,000. 29889

The Master: In each year?

The Witness: In each year.

Q. Now, those buildings Mr. Delehanty were undoubtedly over the entire block?

A. The buildings, no. They were located right about the center of the block.

Q. That is, will you say that part of them were on the 500 feet that I have asked you about and some on the 300 feet?

A. I would not say just exactly where they were located. Those buildings might all be located on that 500 feet, for all I know.

Q. *Have you any notes to show* how many buildings there were?

A. I have a memorandum that there were three buildings on that plot at that time.

Q. Those three buildings are what you valued?

A. Yes, sir, at $125,000.

Q. Have you their dimensions?

A. There was approximately 7,000 square feet.

Q. Can you describe the buildings separately, so I can have them identified by an engineer?

A. I believe those buildings were approximately
29891 25 by 40. One of them was deeper than that. One was about 55 feet in depth. There are two one-story buildings and one two-story building.

Q. The value you have given me for the whole block with these buildings on it, together with the value of the land, is that the sum for which the property would sell, in your judgment, with those improvements thereon, at that time, under ordinary circumstances?

Mr. Goetz: Exclusive of contents.

The Master: Mr. Chambers wants to know whether the figures you have given for the land and the buildings, leaving everything else out,
29892 represents the value which that property would sell for in that condition under ordinary circumstances?

The Witness: I believe that is the value it would sell for.

Q. Did you place a value on the gasometer?

A. I did.

Q. Will you give that value?

Mr. Goetz: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to state what was the value of the gasometer?

Mr. Goetz: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you place a value upon the contents of the buildings for those two years?

Mr. Goetz: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you able to state what was the value of the machinery in those buildings for those two years?

Mr. Goetz: Objected to.

The Master: Objection sustained. 29894

Mr. Chambers: Exception.

Q. Now, Block 1177, Lot 21, for the two years 1910 and 1911, Mr. Delehanty. Have you the size of the lot?

A. The size of that lot is 200 feet 10 inches by 343 feet irregular.

Q. On West 55th Street it is 299 feet 9 inches?

A. Yes, sir.

Q. And along the North River Railroad line it is 205.59 feet is that right?

The Master: That is close enough.

Q. You visited that property?

A. I did. 29895

Q. And you valued it?

A. Yes, sir.

Q. What was the value you placed on it?

A. Unimproved for 1910, $185,000.

The Master: What other year did you have?

The Witness: 1911.

The Master: What figure?

The Witness: $185,000.

The Master: Any improvements on it?

The Witness: There were a number of small buildings on it.

Q. Did you value the buildings?

A. I did.

Q. What value did you place on the buildings in 1910?

A. $15,000.

The Master: That does not include any machinery or anything of that sort?

The Witness: No, sir.

Q. And in 1911 what value?

A. In 1910 and 1911, both the same.

Q. You looked the buildings over?

A. Yes, sir.

Q. And you knew how they looked at that time and their condition?

A. I did.

Q. Now, these sums that you have given for that lot, $185,000 unimproved for the taxes of 1910 and the taxes of 1911, is that the sum for which that property would sell in your judgment if wholly unimproved?

A. It is.

Q. Under ordinary circumstances?

A. Yes, sir.

Q. Is it the full value in your opinion of the land as of those dates?

A. It is.

Q. The sum which you gave of $200,000, for 1910 and 1911, that is the land and the improvements, is that the sum for which in your judgment that property would sell at those times with those improvements thereon?

A. It is.

Q. Is it the full value of the property in your opinion.

A. It is in my opinion.

Q. Those are the only pieces of property you have?

A. That is all.

Cross-Examination by Mr. Goetz:

Q. The valuations which you placed upon the improvements were based upon the sales value and not the reproduction cost of the buildings?

A. I don't understand what you mean by the sales value.

The Master: You valued the buildings at $15,000?

The Witness: That is the value it would cost to reproduce them.

The Master: That is what Mr. Goetz wants to know. 29900

Q. New or in the condition in which they were?

A. We assess as we find the property.

Q. What would those buildings have cost to reproduce new, taking Lot 1, Block 1157?

A. You want to know what I would consider those buildings to be worth if they were new?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial; they are not new.

The Master: I will take it.

Mr. Goetz: This testimony contradicts the theory of all the other witnesses.

The Master: Can you say what it would cost to reproduce it new? 29901

The Witness: It would probably cost more than I placed on it.

Q. How much?

A. Some of those buildings—I should figure, judging from the age of some of those buildings, that it would cost probably 25 per cent more to reproduce them.

Q. In other words, you deducted practically from the cost of reproduction new, 25 per cent on account of the age?

A. No, that was my opinion at the time.

Q. Was that on account of the age of the buildings?

A. I made no deductions. As to previous assessments do you mean, or in my calculation and figure what it would cost to produce them new, and then made the deduction?

Q. Yes. Or, how did you arrive at the cost reproduced similar to the condition in which they were when you saw them?

A. By placing them in a class of buildings that I had in mind. I figured it was worth probably about $1.75 a square foot to reproduce that building.

Q. A structure that is new or second-hand?

29903 A. To construct a building similar to that.

The Master: In that condition?

The Witness: In that condition.

The Master: In other words you took what you thought was a fair factor for that character of building in that condition?

The Witness: Precisely.

The Master: Was that so as to the other buildings?

The Witness: Yes, sir.

The Master: You took the square foot area and multiplied it by a factor that you thought was the correct factor for that type of building in that condition?

29904 The Witness: Yes, sir.

Q. The age of the building was not a factor which might cause you to reduce the valuation of the buildings, was it?

A. Not at all, because it was probably suitable for what it was used for.

Q. In other words, in 1911, you valued the buildings at the same amount at which they were valued in 1910?

A. Exactly.

Adjourned to Monday, January 12, 1920, at 9:30 o'clock A. M.

Last Complainant's Exhibit 411.

Last Defendants' Exhibit AA-47.